



# Bill Digest

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

Bill No. 95 of 2018

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### Abstract

The Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 will amend the *Qualifications and Quality Assurance (Education and Training) Act 2012*, which established Quality and Qualifications Ireland (QQI).

The Bill is intended to address issues that have hindered QQI in fulfilling its intended role. The proposed changes include strengthening QQI's role as a regulator of quality assurance in further and higher education. The Bill also includes proposals to criminalise contract cheating services in higher education.

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## Glossary

This glossary outlines the meanings and relevance of certain terms commonly used in the discussion of the background and provisions of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018*.

**ACELS – Accreditation and Coordination of English Language Services:** an accreditation service for English language organisations in the State that was established in 1969. Applications for accreditation under ACELS are no longer being accepted and it will be superseded by the introduction of the IEM, discussed below.

**IEM – International Education Mark:** a mark that can be displayed by an education provider to indicate that it complies with standards, procedures and practices mandated by QQI. The IEM is provided for in section 61 of the 2012 Act.

**NFQ – National Framework of Qualifications:** the system of certification and ranking of recognised qualifications in education and training in the State. The NFQ is promoted, maintained and developed by QQI under Part 4 (sections 43-59) of the 2012 Act.

**PEL – Protection of Enrolled Learners:** arrangements to protect the interests of enrolled learners in cases where an education provider is unable to deliver a programme. PEL is overseen by QQI under section 65 of the 2012 Act.

**Provider:** defined in section 2 of the 2012 Act as “a person who provides, organises or procures a programme of education and training”. The 2012 Act provides for **relevant providers**, which provide services or awards that are validated by QQI and **linked providers**, which provide programmes that lead to an award conferred by a separate awarding body. Section 22 of the Bill proposes a new section 55F of the 2012 Act which provides for a new category called **associated providers**. These are providers who provide programmes that satisfy all the prerequisites for an award in the NFQ that is provided by a separate awarding body.

**QQI – Quality and Qualifications Ireland:** the independent body established under the 2012 Act that is responsible for promoting quality and accountability in education and training services in the State. QQI develops and oversees the NFQ, assures the quality of programmes of education and training, and regulates the awards to which they lead.

## Summary

### Purpose of the Bill

The *Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018*<sup>1</sup> ('the Bill') proposes to amend the *Qualifications and Quality Assurance (Education and Training) Act 2012* ('the 2012 Act').<sup>2</sup> The 2012 Act established Quality and Qualifications Ireland ('QQI') as the independent body responsible for external quality assurance and qualifications across the further and higher education sectors in Ireland.<sup>3</sup>

A High Court ruling in January 2015 found that the 2012 Act did not give QQI statutory powers to operate the Accreditation and Coordination of English Language Services (ACELS) accreditation system, which had been in operation in the State since 1969.<sup>4</sup> The decision came against the background of the Government's objective of establishing a more robust regulatory framework for educational standards. This added impetus to proposals to amend QQI's governing legislation.

The changes proposed in the Bill are intended to facilitate the introduction of new policies and make the operation of existing policies more efficient.

Given the broad range and the technical nature of the Bill, this Bill Digest focuses on proposals that have been the main subject of stakeholder and media comment. These are:

- the International Education Mark (IEM);
- proposals for the Protection of Enrolled Learners (PEL);
- prosecution of 'essay mills' and academic cheating; and
- granting award-making powers to Institutes of Technology (IoTs).

### International Education Mark

The IEM is a key component of the Government's policy for the English language sector and is intended to provide a quality framework for the provision of education to international learners.<sup>5</sup> Only providers that meet QQI's quality-assurance procedures and standards will be allowed to carry the IEM. Providers must gain QQI's authorisation to use the IEM.

The Department of Education and Skills' International Education's Strategy for Ireland 2016-2020 commits to increasing by 25% the number of students in the high-quality English language sector by the end of that period.<sup>6</sup> Introduction of the IEM is a core component of this.

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<sup>1</sup> [Qualifications and Quality Assurance \(Education and Training\) \(Amendment\) Bill](#), (Bill 95 of 2018). The L&RS Bill Tracker for this Bill is available [here](#).

<sup>2</sup> The L&RS Bill Tracker page for the 2012 Act is available [here](#). The Bill Digest is available [here](#).

<sup>3</sup> QQI is the successor to Further Education and Training awards Council (FETAC), the Higher Education and Training Awards Council (HETAC), the Irish Universities Quality Board (IUQB), and the National Qualifications Authority of Ireland (NQAI).

<sup>4</sup> *National Employee Development Training Centre Ltd. v Minister for Justice and Equality, and Qualifications and Quality Assurance Authority of Ireland* [2015] IEHC 140, judgment of Baker J. available [here](#).

<sup>5</sup> The majority of English language schools in Ireland are privately run and do not come under the remit of the Department of Education and Skills.

<sup>6</sup> Department of Education and Skills, [Irish Education Globally Connected – An International Education Strategy for Ireland, 2016-2020](#).

Introduction of the IEM has been delayed by legislative difficulties with the 2012 Act. One of the conditions for applying for the IEM is that a provider's programmes must lead to awards recognised in the National Framework of Qualifications (NFQ). However, the 2012 Act does not grant QQI express legal power to recognise awards. The Bill's purpose in this regard is to authorise QQI to develop and introduce the IEM.

Amendments to the 2012 Act proposed in the Bill also allow for more than one IEM in the future. QQI has already published a 'Code of Practice for Provision of Programmes of Education and Training to International Learners'.<sup>7</sup> This will enable providers to put in place arrangements for the IEM before the statutory scheme proposed in the Bill takes legal effect.

### Protection of Enrolled Learners

Section 65 of the 2012 Act requires providers that seek QQI's validation of their programmes to have in place specific arrangements for protection of enrolled learners (PEL) in circumstances where the provider is unable to provide a programme for which the learner has paid. Under the 2012 Act, the primary requirement is for 'academic bonding'.<sup>8</sup> This requires education and training providers to put in place academic transfer arrangements with at least two other providers to facilitate the transfer of learners to similar programmes.

If academic bonding is not possible, the 2012 Act allows providers, with QQI's agreement, to arrange 'financial bonding', which involves financial arrangements for the refund of moneys most recently paid by an enrolled learner for tuition and related fees.

The operation of the 2012 Act's PEL provisions has caused difficulties. Academic bonding may not be possible for providers of particular programmes, while financial bonding arrangements have sometimes led to the State bearing the costs arising from failures of private education institutions.

To address these problems, the Bill proposes a national scheme for PEL – the Learner Protection Fund, which is to be funded principally by relevant programme providers.

### Essay Mills / Contract Cheating

The Bill proposes new powers to prosecute essay mills and other forms of academic cheating.

The offences proposed cover unauthorised provision of course work, sitting of exams and provision of answers to exam questions. Advertising of such services is also to be made an offence. Conviction on indictment can be punished by fines of up to €100,000 and/or up to 5 years' imprisonment.

### Granting of award-making powers to Institutes of Technology

The Bill provides for the granting of award-making powers, with the exception of doctoral awards (level 10 on the NFQ), to all of the Institutes of Technology.

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<sup>7</sup> QQI (July 2015) [Code of Practice for Provisions of Programmes of Education and Training to International Learners](#).

<sup>8</sup> This is a commonly used descriptive term that is not defined in the 2012 Act.

## Introduction

In a 2017 Departmental press release, the Minister for Education and Skills, Richard Bruton T.D., outlined the Government's intention to introduce legislation providing new powers to Quality and Qualifications Ireland (QQI), the regulator for higher and further education awards. The purpose of this was to improve the quality of Ireland's education system, to facilitate the introduction of new policies and to make the operation of existing policies more efficient.<sup>9</sup> These proposals are given legislative form in the [Qualifications and Quality Assurance \(Education and Training\) \(Amendment\) Bill](#) ('the Bill'), which was published on 1 August 2018.

QQI was established on 6 November 2012 under the [Qualifications and Quality Assurance \(Education and Training\) Act 2012](#). The purpose 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.

Legal difficulties have impeded QQI in fulfilling its intended role.<sup>10</sup> The proposed changes to the 2012 Act aim to address this by strengthening QQI's role as a regulator of quality assurance in further and higher education. The press release states that this is particularly important for overseas students, as it is hoped to increase the value of the sector catering to these by 33% to €2.1 billion by 2020.

In a 2018 Departmental press release,<sup>11</sup> the Minister of State for Higher Education, Mary Mitchell O'Connor T.D. outlined the key changes introduced in the Bill:

- to give QQI statutory authority to list awarding bodies and to include their qualifications in the National Framework of Qualifications. This will enable QQI to include awards made by private, professional and non-national awarding bodies, where appropriate, in the Framework;
- to provide QQI with statutory powers to evaluate a provider's bona fides so as to ensure that it is fully equipped to provide a programme of education and training. This will strengthen QQI's role as a regulator in the education and training sector;
- to facilitate information sharing by QQI and other State bodies, including the Higher Education Authority and [SOLAS](#). This will ensure that there is a coordinated approach to regulation of the further and higher education sectors;
- to strengthen and improve QQI's approval processes for providers' quality assurance procedures;
- to facilitate the introduction of the International Education Mark (IEM);
- to involve education and training providers more centrally in the application process for recognition of prior learning (RPL);
- to strengthen learner protection measures;
- to provide QQI with statutory powers to prosecute 'essay mills' and other forms of academic cheating; and

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<sup>9</sup> Department of Education and Skills press release (15 May, 2017) [Bruton Announces New Powers for the Higher and Further Education Regulator](#).

<sup>10</sup> *National Employee Development Training Centre Ltd. v Minister for Justice and Equality, and Qualifications and Quality Assurance Authority of Ireland* [2015] IEHC 140, judgment of Baker J. available [here](#). The High Court found that QQI's statutory powers did not permit it to operate an accreditation scheme not provided for in the 2012 Act.

<sup>11</sup> Department of Education and Skills press release [Minister Mitchell O'Connor announces the publication of Qualifications and Quality Assurance \(Education and Training\) \(Amendment\) Bill](#) (20 July 2018).

- to provide for the granting of award-making powers, with the exception of doctoral awards, to all of the Institutes of Technology.

QQI welcomed the Cabinet's approval of the Bill.<sup>12</sup> Dr. Pádraig Walsh, CEO of QQI, said:

“We are delighted to see this amended legislation progress through the various stages of approval and look forward to preparing for its enactment in the coming months. It will allow QQI to extend its statutory oversight to ELE providers and provide international students with confidence in the quality of their chosen course. With Brexit fast approaching, these new powers will help copper-fasten Ireland's reputation as a destination of choice for learning the English language.”

Given the broad scope of the Bill, this Bill Digest focuses on the provisions regarding the IEM, PEL, and prosecution of essay mills or contract cheating.<sup>13</sup>

A [General Scheme](#) of the Bill was published in 2017. On 18 July 2017 the Joint Committee for Education and Skills determined that pre-legislative scrutiny was not required for the Bill.<sup>14</sup> No Regulatory Impact Analysis for the Bill has been published.

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<sup>12</sup> QQI press release, (23 July 2018) [QQI welcomes Cabinet approval of the Quality Amendment Bill](#)

<sup>13</sup> These are key amendments which have been raised by stakeholders, and discussed in the media.

<sup>14</sup> [Minister for Education and Skills, 11 September 2017, Written Answer](#)



## Background Context

### Overview of Quality and Qualifications Ireland

Quality and Qualifications Ireland (QQI) is the independent State agency responsible for promoting quality and accountability in education and training services in Ireland. It was established in 2012 by the *Qualifications and Quality Assurance (Education and Training) Act 2012*<sup>15</sup> as the successor to FETAC, HETAC, IUQB and NQAI.<sup>16</sup>

QQI's mission is to:

- promote the enhancement of quality in Ireland's further and higher education and training, and quality assure providers; and
- support and promote a qualifications system that benefits learners and other stakeholders.

Table 1 provides an overview of QQI's services.<sup>17</sup>

**Table 1: Summary of QQI Services**

<b>Quality assurance</b>	<ul style="list-style-type: none"> <li>• Develop quality assurance guidelines;</li> <li>• Approve providers' quality assurance procedures;</li> <li>• Validate programmes;</li> <li>• Monitor and review providers.</li> </ul>
<b>Qualifications</b>	<ul style="list-style-type: none"> <li>• Set standards for education and training;</li> <li>• Award qualifications and issue certificates;</li> <li>• Enable access, transfer and progression;</li> <li>• Recognise qualifications.</li> </ul>
<b>The National Framework of Qualifications</b>	<ul style="list-style-type: none"> <li>• Maintain the National Framework of Qualifications<sup>18</sup> (NFQ) as a system of relating different qualification levels to one another;</li> <li>• Promote and develop the NFQ;</li> <li>• Support the implementation of the NFQ.</li> </ul>
<b>Recognition</b>	<ul style="list-style-type: none"> <li>• Advise on recognition of foreign qualifications in Ireland;</li> <li>• Advise on recognition of Irish qualifications abroad.</li> </ul>
<b>International Education</b>	<ul style="list-style-type: none"> <li>• Establish a code of practice for providers offering courses to international learners;</li> <li>• Authorise the use of the International Education Mark (IEM), a quality mark for international education.</li> </ul>

Source: QQI website

<sup>15</sup> Law Reform Commission, [Qualifications and Quality Assurance \(Education and Training\) Act 2012 \(Revised\)](#) Updated to 18 November 2014

<sup>16</sup> Further Education and Training Awards Council (FETAC), the Higher Education and Training Awards Council (HETAC), the Irish Universities Quality Board (IUQB), and the National Qualifications Authority of Ireland (NQAI)

<sup>17</sup> As detailed on its website

<sup>18</sup> QQI, [National Framework of Qualifications \(NFQ\)](#)

In addition to public colleges, institutes and the universities, QQI is also responsible for the external quality assurance of some independent private colleges that offer programmes leading to QQI awards. QQI also manages a national scheme for the quality assurance of English language schools.

Providers can apply to QQI to have their programs of education and training approved so that the programs can lead to a national qualification (QQI award).

Learners receive a QQI award when they successfully complete a course at any of the 10 levels of the NFQ. In 2016, QQI made more than 280,000 awards to learners completing education and training programmes at all levels of the NFQ.

## High Court Ruling

In January 2015 the High Court ruled that QQI's statutory powers did not allow it to operate the Accreditation and Coordination of English Language Services (ACELS) accreditation scheme.<sup>19</sup>

ACELS is a voluntary scheme for inspection and recognition of English language schools in the State, and for control of standards in teacher training and promotion of English language courses. It was initially operated by the Department of Education and Science, and subsequently by a company limited by guarantee. ACELS was subsequently operated through a statutory body, the National Qualifications Authority of Ireland, until the establishment of QQI in 2012, which then assumed responsibility for it.

The background to this case is outlined in Ms Justice Baker judgment. It notes the high-profile closures in 2014 of several schools that offered diploma-type education to international students. She quotes evidence that the Government was concerned about the control and management of these schools, and that a more robust regulatory framework might be needed.

The judgment outlines that students from outside the European Economic Area (EEA) attending some English language courses could obtain a 'Stamp 2' visa allowing them to remain in the State for 12 months, to study part-time for six months and work part-time for up to 20 weeks, and to work full-time for a further six months. Some of these students were perceived by the Minister as more interested in working in Ireland than study. Evidence indicated that there was a perception that some educational providers were offering courses that were not operating at high standards: in some institutions, students' attendance records were not satisfactory and many students did not sit exams and showed no improvement in levels of competence in their subject. Moreover, a high-profile financial failures had a negative effect on the entire English language teaching sector.

Until the complaints that formed the basis of this case, ACELS accreditation had not been a requirement to offer English language teaching in Ireland; nor was it necessary for a student to be registered with an ACELS course to obtain a Stamp 2 visa. However, on 2 September 2014 the Department of Education and Skills issued a policy statement "Regulatory Reform of the International Education Sector and the Student Immigration Regime".<sup>20</sup> This sought to impose a more regulated regime for accreditation of English language schools. It established an Interim List

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<sup>19</sup> [National Employee Development Training Centre Ltd. v Minister for Justice and Equality and Qualifications and Quality Assurance Authority of Ireland; and Academic Bridge Ltd. v Minister for Justice and Equality and Qualifications and Quality Assurance Authority of Ireland, \[2015\] IEHC 140.](#)

<sup>20</sup> Department of Education and Skills, [Regulatory Reform of the International Education Sector and the Student Immigration Regime](#), Policy Statement, September 2014.

of Eligible Programmes (ILEP).<sup>21</sup> Eligibility under this required accreditation or recognition by Irish awarding bodies.

QQI was operating ACELS on an interim basis pending the introduction of the proposed new IEM scheme, under which accreditation would be provided to service providers that demonstrated compliance with the IEM code of practice.

The National Employee Development Training Centre Ltd., an English language training provider, applied for but failed to obtain an ACELS accreditation. Academic Bridge Ltd – another provider – was awaiting a decision on its application. Both had enrolled foreign students in English language programmes, the majority from non-EU/EEA countries. They argued that QQI had no statutory power to operate ACELS, and so had no power to treat them as unaccredited.

On 13 January 2015 Ms. Justice Baker ruled 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.”

Ms. Justice Baker ruled that QQI did not have the power to operate the ACELS accreditation system. She ruled that QQI is a statutory body with no inherent powers, its powers only being those vested in it by its enabling legislation. The Act did not provide for operation of ACELS, so QQI could not undertake that function.

A statement on 13 January 2015 by the Minister<sup>22</sup> said:

“...The Ministers for Justice and Equality, and Education and Skills are fully committed to delivering on the Government's regulatory reforms programme in this area announced in September 2014. The Ministers will examine the range of options that are available to progress the reforms in a manner consistent with the High Court decision, and without prejudice to a possible appeal...”

Therefore, aside from the Government's policy objective of establishing a more robust regulatory framework, this decision added impetus to moves to amend QQI's statutory powers.

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<sup>21</sup> This is a mechanism for identifying programmes eligible for recruiting non-EEA students. Department of Justice and Equality, [Interim List of Eligible Programmes \(ILEP\)](#)

<sup>22</sup> Department of Justice and Equality, [Statement by Minister Fitzgerald and Minister O'Sullivan on Judgment of the High Court in relation to international education sector](#) (13 January 2015).

## Government Policy – International Education Sector

The Department of Education and Skills report 'International Education Strategy for Ireland, 2016–2020'<sup>23</sup> sets out four strategic priorities:

- a supportive national framework, including the IEM to underpin the State's international education offering by a robust regulatory environment;<sup>24</sup>
- internationally-oriented globally competitive higher education institutions; and
- sustainable growth in the English language training sector.

A Government policy statement published in May 2015<sup>25</sup> affirmed a 2014 policy statement<sup>26</sup> which outlined a series of reforms to address problems in Ireland's private college sector. These were intended to protect the consumer and educational interest of genuine students, address abuse of the labour market, protect the high-quality public and private providers of international education in Ireland and safeguard Ireland's reputation.

Three pillars of reform were proposed in the 2014 policy statement:

- a more restrictive set of programmes will be permitted for student immigration purposes;
- an enhanced inspection and compliance regime will be introduced; and
- the terms of the student work concession will be strengthened.

The 2015 policy statement noted that, in 2014, 10 colleges closed and over 3,000 (mostly non-EEA) students were left without an education programme that they had paid for. It added that some abuse of immigration regulations had taken place, to facilitate economic migration of non-EEA nationals to work in Ireland.

The statement said that introduction of the IEM was central to work central to the development of overarching and comprehensive immigration and quality assurance processes for international education. Pending that, the Government would continue implementation of the ILEP. To take account of the High Court ruling, QQI would retain an advisory role in the interim vetting process for English language providers but would have no decision-making function in relation to inclusion of programmes on the ILEP.

## Data on International Students in Ireland<sup>27</sup> - Number of Students

The overall number of international students attending publicly and privately funded Irish HEIs increased by 58% between 2010/2011 and 2014/2015 reached a total of 33,118. This was driven by increases in non-EU students, up 85% over the same period (to reach 21,440). Figure 1 below illustrates this increase.

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<sup>23</sup> Department of Education and Skills, [Irish Education Globally Connected – An International Education Strategy for Ireland, 2016-2020](#).

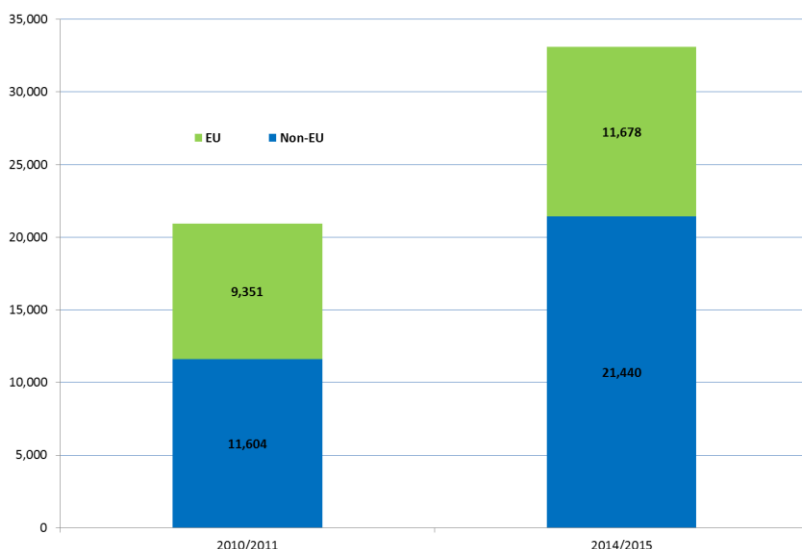
<sup>24</sup> The Government's [Action Plan for Education 2017](#) is an annual plan within a broader strategic framework. Part of this plan included a commitment to draft the Qualifications and Quality Assurance (Amendment) Bill and make necessary legislative changes to introduce the IEM.

<sup>25</sup> [Reform of the International Education Sector and Student Immigration System](#), Government Policy Statement (May 2015).

<sup>26</sup> Department of Education and Skills, [Regulatory Reform of the International Education Sector and the Student Immigration Regime Policy Statement](#) (September 2014).

<sup>27</sup> The data in this section is taken from the Department of Education and Skills report: [Irish Educated Globally Connected – An International Education Strategy for Ireland, 2016 – 2020](#).

**Figure 1: Number of EU and Non-EU Students in Higher Education 2010/11 v. 2014/15**



Source: Department of Education and Skills; Irish Educated, Globally Connected – An International Education Strategy for Ireland, 2016-2020.

In the English language sector, approximately 106,000 students were in high-quality English language training institutions, up 10% from 2010. There was an estimated growth of 29% in student weeks between 2010 and 2014, suggesting that more students are staying longer in Ireland.

#### Number of International Students - Growth Target, 2014/2015 to 2019/2020

- Higher education sector: +33% from 33,118 to 44,000.
- English language training sector: +25% from 106,000 to 132,500.

### Output Value of International Students

International education has become an increasingly important funding stream for higher education institutions.

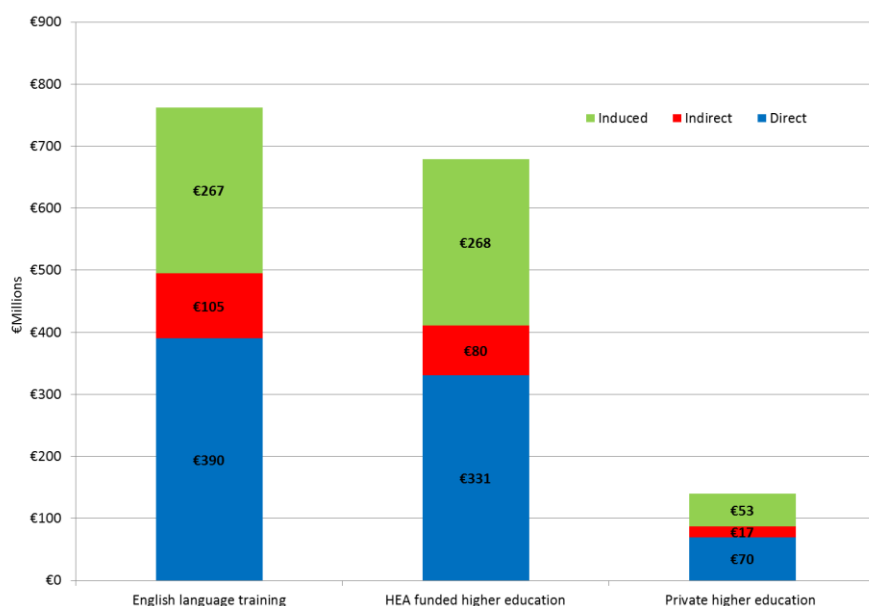
The value of the international Higher Education and English language training sectors include direct income (from fees paid by EU and non-EU students and non-tuition expenditures), as well as indirect and induced output impacts. The figures below are derived from CSO input and output tables.<sup>28</sup>

The direct output of English language training (ELT), private and HEA-funded institutes of technology and universities was approximately €791 million in 2014/2015. Output effects (indirect and induced) of these sectors were estimated at €790 million,<sup>29</sup> leading to a total impact of €1.58 billion.

<sup>28</sup> The supply and use and input-output tables provide a detailed picture of the transactions of goods and services by industries and consumers in the Irish economy. They highlight the inter-industry flows that lie behind the National Accounts main aggregates (which show the components of gross value added (GVA) by industry as well as imports, exports and taxes and subsidies on products).

<sup>29</sup> These figures can be considered conservative as they do not capture the value of other outputs, such as visits from friends or family members.

Figure 2: Output Value of International Students, 2014/15



Source: Department of Education and Skills; Irish Educated, Globally Connected – An International Education Strategy for Ireland, 2016-2020.

The aim of the Government’s policy is to increase output impact value from €1.58 billion in 2014/15 to €2.1 billion by 2019/20.

**Output Value of International Students - Growth Target, 2014/2015 to 2019/2020**

- Higher education sector: +40%, from €819 million to €1.15 billion.
- English language training sector: +26%, from €762 million to €960 million.

## International Education Mark

QQI is currently authorised under the 2012 Act to award the IEM to approved providers that offer English language and higher education and training courses to international students.

If enacted, section 25 of the Bill will clarify and expand QQI’s powers to introduce the IEM. QQI has already published a “Code of Practice for Provision of Programmes of Education and Training to International Learners.”<sup>30</sup> This enables providers to put in place arrangements for the IEM, prior to implementation of the statutory scheme.

On its website<sup>31</sup> QQI states that it will authorize use of an IEM by providers who have demonstrated that they have:

- appropriate quality assurance arrangements;
- arrangements for access, transfer and progression of students;
- programs that lead to awards in the NFQ; and
- demonstrated compliance with the “Code of Practice for Provision of Programmes of Education and Training to International Learners”.

<sup>30</sup> QQI, [Code of Practice for Provisions of Programmes of Education and Training to International Learners, \(July 2015\)](#).

<sup>31</sup> QQI, [International Education Mark \(IEM\)](#).

QQI explains,

“In order to be eligible to access the IEM, providers will first be required to establish quality assurance procedures. This agreement confirms a provider’s capacity to develop, maintain and improve the quality of education, training, research and related services for all learners. Providers will then demonstrate compliance with the Code of Practice, as well as meet other general conditions which may be stipulated.”<sup>32</sup>

### Development of the Code of Practice for Provision of Programmes of Education and Training to International Learners

The development of QQI’s policy in respect of the IEM can be analysed by reference to:

- QQI Green Paper, 2013,
- QQI White Paper, 2014, and
- QQI Code of Practice, 2015.

#### May 2013

In May 2013 QQI issued a ‘Green Paper on the International Education Mark’.<sup>33</sup> The stated purpose of the Green Paper was to:

- explain the legislative basis of the IEM;
- locate the IEM within wider public policy;
- identify issues for public consultation; and
- stimulate engagement with interested stakeholders.

The paper noted that Ireland’s national strategy on international education positions the IEM as part of the quality framework for the promotion of Ireland as a destination for international students.

National policy on student immigration was also noted as likely to have an impact on demand from providers seeking authorisation to use the IEM. For that reason, student immigration policy and the objectives<sup>34</sup> of the IEM should be aligned.

International codes of practice were found to cover broadly similar matters, such as marketing, enrolment practice, fees and complaints procedures. However, the Green Paper noted that they vary in terms of their statutory or voluntary bases and in their sectoral coverage. In most cases, codes of practice apply only to higher education institutions, except in New Zealand, where they apply to all education providers, and in the UK, where the code was operated by the UK Council for International Student Affairs.

**Table 2: Basis of International Codes of Practice**

Country	Code of Practice - Statutory or Voluntary?
Australia and New Zealand	Statutory
Canada, Denmark, Netherlands, South Africa, UK	Voluntary

<sup>32</sup> QQI, [International Education Mark \(IEM\)](#)

<sup>33</sup> QQI, [Green Paper on the International Education Mark](#), (May 2013)

<sup>34</sup> Which are to recognize quality providers of education to international learners.

Source: QQI, Green Paper on the International Education Mark (May 2013)

Issues identified for consultation in the Green Paper included:

- whether there should be a single or multiple versions of the IEM;
- when the IEM should be made available;
- matters that should be included in the Code of Practice;
- the level of prescription and detail that should be included in the Code of Practice;
- how QQI should review compliance with the Code; and
- the countries in which the Code should be applicable.

### May 2014

In May 2014 QQI released a White Paper 'Policy on Authorisation to use the International Education Mark' for consultation.<sup>35</sup> The White Paper was framed by public policy, in particular by Ireland's International Education Strategy and submissions made in response to the public consultation on the Green Paper for the IEM.

The White Paper noted that Part 5 (sections 60-63) of the 2012 Act establishes a statutory basis for the IEM. It requires QQI to:

- establish a Code of Practice for the provision of programmes to international learners;
- specify an IEM to indicate that a provider is in compliance with the code of practice;
- authorise the use of the IEM by providers that comply with the code of practice; and
- review compliance with the Code of Practice and use of the IEM.

Relevant providers under the 2012 Act are eligible to apply for authorisation to use the IEM. These include:

- designated awarding bodies (Universities, Dublin Institute of Technology and the Royal College of Surgeons in Ireland);
- linked providers of designated awarding bodies;
- providers whose programmes are validated by QQI; and
- providers to whom authority to make awards has been delegated.

Section 61(6) of the 2012 Act makes provision for an additional class of provider, not listed above, that is treated as a relevant provider for the purpose of authorization of the IEM. This includes voluntary providers that do not offer programs leading to QQI awards and providers that offer programs that do not lead to awards, such as English language courses that are accredited under the ACELS scheme.

The White Paper notes that development of the draft Code of Practice was informed by norms and standards developed by the Irish Higher Education Quality Network<sup>36</sup> for higher education and training providers, and by ACELS standards and regulations for English language teaching providers.<sup>37</sup>

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<sup>35</sup> QQI, [White Paper – Policy Authorisation to use the International Education Mark](#), (May 2014).

<sup>36</sup> IHEQN Subcommittee, [Provision of Education to International Students: Code of Practice and Guidelines for Irish Higher Education Institutions](#).

<sup>37</sup> QQI continues to inspect and monitor the ACELS recognized providers, as at the time of the High Court ruling, but is not permitted to accept new applications from other English language education providers (ELE). QQI has devised a new domain of ELE awards and has now two sets of these available to all interested ELE providers. A provider does not need to be ACELS-recognised to apply for programme validation for these QQI awards. It was acknowledged that

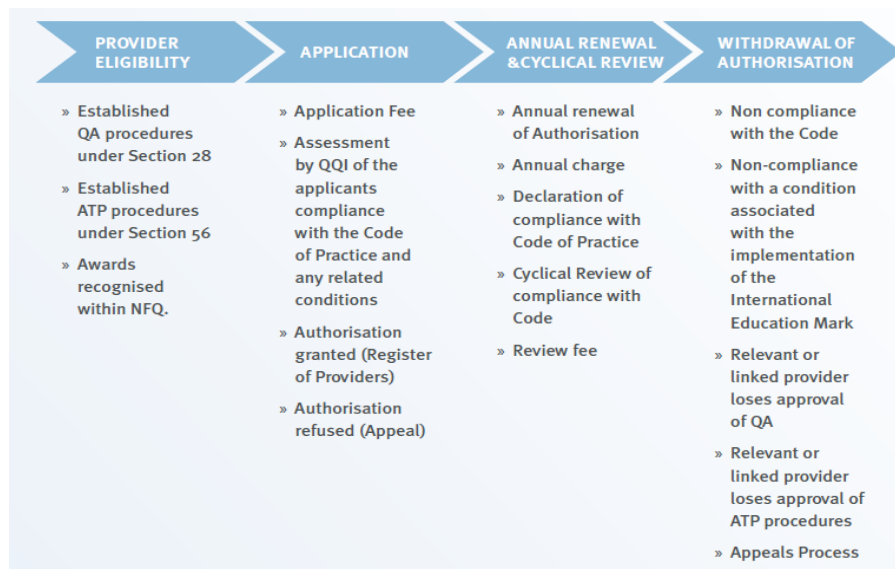


Providers seeking authorisation to use the IEM may be subject to the following fees and charges:

- an initial application fee payable with application;
- an annual charge; and
- a fee in relation to review of provider compliance with the Code.

The authorisation process outlined in the White Paper is shown in Figure 3.

**Figure 3: Authorisation Process for IEM**



Source: Policy on Authorization to use the International Education Mark (May 2014)

QQI also produced a White Paper on the ‘Code of Practice for Providers of Programmes of Education and Training to International Students’ to supplement its ‘Policy on Authorisation to use the IEM’.<sup>38</sup> The Code relates to the provision of services to international students and forms part of a suite of quality assurance arrangements between QQI and providers.

The White Paper stated that eligibility criteria, as per the 2012 Act, need to be met to allow application for the IEM:

- the provider must have established procedures for quality assurance in relation to the quality assurance guidelines for that sector;
- the provider must have established procedures for access, transfer and progression<sup>39</sup> (ATP); and
- in respect of each programme of education and training of the provider which leads to an award, that award must be recognised in the NFQ.

the ACELS scheme would cease to exist with the introduction of the new statutory International Education Mark (IEM). See [ACELS Regulations and ELE Information Briefings](#).

<sup>38</sup> QQI, [White Paper – Code of Practice for Providers of Programmes of Education and Training to International Students](#), (2014).

<sup>39</sup> QQI, [Access, Transfer and Progression](#). “Access, Transfer and Progression describes the pathways available to learners to enter and transfer between, and progress from programmes of education and training, which are the main route to achieving awards and qualifications”.

## July 2015

QQI published the 'Code of Practice for Provision of Programmes of Education and Training to International Learners in July 2015'.<sup>40</sup> This was issued under Section 60(1) of the 2012 Act.

This Code provides a basis for the development of a policy framework for provision of education and training to international learners by providers in Ireland.

The Code comprises four categories of criteria to be met by providers:

- general requirements;
- marketing, recruitment and admissions;
- fees, refunds and subsistence;
- supports and services for international learners.

## News and media

A May 2017 article in The Pie News (a publication that specialises in news relating to the international education business)<sup>41</sup> noted the Government's proposals to legislate for the IEM and said that doing so would benefit education and training providers and students by highlighting the providers who are delivering high-quality education services. However, the article suggested a cautious view was being taken by stakeholders. It quoted Graham Gilligan, managing director of Welcome Ireland;<sup>42</sup>

"I am very optimistic that the IEM will communicate a message of quality and assurance globally for Ireland as a destination, but I will wait to see exactly what requirements schools will have to fulfil. For example, will they need Irish accreditation? Will there be more transparency regarding ownership and management structures?"

The article notes as a positive point that the draft legislation distinguishes between tertiary and English language providers and extends the IEM's remit to providers that teach non-EU students outside of Ireland, such as through online and blended-learning programs, or on overseas campuses.

## Protection of Enrolled Learners

Section 65 of the 2012 Act requires providers that seek QQI's validation of a programme or award of three months' or more duration to have specific Protection of Enrolled Learners (PEL) arrangements in place.<sup>43</sup> These ensure that a learner enrolled on a programme, and who has paid fees, is not disadvantaged if the programme ceases before its completion.

These can be arrangements with at least two other providers for the transfer of learners to similar programmes (commonly called 'academic bonding') or, where not practicable (and subject to QQI's agreement) for the refund of moneys most recently paid by the learner (called 'financial bonding').

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<sup>40</sup> QQI, [Code of Practice for Provisions of Programmes of Education and Training to International Learners](#), (July 2015).

<sup>41</sup> PIE News (16 May 2017) [Ireland: new bill to pave way for long-awaited International Education Mark](#)

<sup>42</sup> On its website it says that "Welcome Ireland is Ireland's leading language specialist and offers quality language, internships and work and study programmes in Ireland. Welcome Ireland is also a Quality English accredited agency".

<sup>43</sup> This does not apply to certain providers of a programme of education and training as set out in Section 65(5) of the 2012 Act. For example, a previously established university, an institute of technology etc.

QQI provides PEL protocols and guidelines. Protocols set out in ‘Protection of Enrolled Learners: Protocols for the Implementation of Part 6 of the 2012 Act’<sup>44</sup> help providers to fulfil their legal obligations with regard to PEL (see Table 3 below).

**Table 3: Summary of Obligations for Different Categories of Providers**

	Information to learners	Put specific PEL arrangements in place for PEL-required programs	Assist in the accommodation of affected learners
Protocols	3.2	3.3-3.5	3.6
All relevant providers as defined in 2012 Act	Yes	No	Yes
Private, voluntary and public providers of QQI validated programmes or with delegated authority (unless exempt) who charge fees and offer programs of 3 months or longer duration	Yes	Yes	Yes
Providers who are not relevant providers as defined in 2012 Act	Yes	No	No

Source: Protection of Enrolled Learners: Protocols for the Implementation of Part 6 of the 2012 Act.

Difficulties can arise with the operation of PEL. For example, academic bonding for providers of particular programmes may not be possible, or the State may have to bear the costs for failures of private education institutions.

**Sections 27 to 30 of the Bill provide for the introduction of a national scheme for PEL – the Learner Protection Fund.** This is to be funded principally by providers and will permit the use of funds to cover the cost of providing programmes to enrolled learners where the provider is unable to do so (or, where circumstances so require, refunding their fees).

## Prosecuting ‘Essay Mills’ and ‘Contract Cheating’

### Plans to tackle academic cheating

In a statement<sup>45</sup> on 15 May 2017, Minister Bruton said,

“Today I am announcing plans to get tough and tackle academic cheating. I am proposing new powers to prosecute someone who provides or advertises essay mills or other services which would facilitate cheating. This is vital to ensuring an equal playing field for all our students.”

<sup>44</sup> QQI, [Protection of Enrolled Learners: Protocols for the Implementation of Part 6 of the 2012 Act](#), (September 2013). [Operating principles for PEL](#) have also been detailed by QQI.

<sup>45</sup> Department of Education and Skills press release [Bruton Announces New Powers for the Higher and Further Education Regulator](#), (15 May 2017).

Previously, an article in The Irish Times (12 March 2017) had indicated that Minister Bruton had tasked QQI to develop new guidelines for this area and that this Bill (which was then being drafted) would give QQI “specific powers to prosecute ‘essay mills’ and other forms of cheating.”<sup>46</sup>

The article explained that QQI’s guidelines would be developed in consultation with providers, students and other relevant parties, and would be informed by recent UK research and experience.

Current guidelines deal with plagiarism, but not the use of paid-for essays. The article noted that, since 2010, there have been approximately 1,000 cases of students in Ireland being disciplined for plagiarism, but the real number is likely to be significantly higher given that several universities did not provide figures. Colleges reported that students were disciplined under their codes of conduct, with penalties ranging from written warnings to potential disqualification for repeat offenders.

### A legal approach to tackling contract cheating

In their paper ‘A legal approach to tackling contract cheating?’ (2017), Draper and Newton<sup>47</sup> examine the use of legislation to tackle contract cheating and find that current laws are not fit for that purpose. Nonetheless they conclude that a legal approach to contract cheating is possible and appropriate.

They use UK law to suggest how this might be achieved and find that the most successful approach would be to focus legislation on providers of contract cheating services, in particular commercial services.

They define ‘contract cheating’ as a relationship between students, their university and a third party who completes assessments for the students to be submitted to the university but whose input is not permitted. Other actors might also be directly or indirectly involved, whether knowingly or not.

The paper focuses on criminal law and notes that prosecutions in jurisdictions such as Australia, the UK, New Zealand, Canada and the USA require two criteria to be satisfied:

- there must be evidence that the offence occurred; and
- it must be in the public interest to pursue a prosecution.

The paper says that some jurisdictions have laws designed to prevent the activities of contract cheating services, but they have not been very effective.

The study cites [section 292E of New Zealand's Education Act 1989](#) to illustrate the difficulties of legislating to tackle contract cheating. This law was introduced in 2011 and makes it an offence to provide or advertise cheating services. A person who commits an offence is liable, on summary conviction, to a fine not exceeding NZ\$10,000. The authors state that the law has been applied only once – in 2014 – and the case was not pursued to completion. In that case, a court confiscation order to seize property of a contract cheating company for further investigation was considered an acceptable resolution.

The paper states that the New Zealand law was the basis for an unsuccessful proposal to amend UK law in early 2017. The failure of the UK proposal was due to two concerns: the ‘intent’ element of the crime and defining ‘contract cheating’. The authors refer to statements in the UK House of Lords to the effect that “it may be difficult to prove that a provider intended to give an unfair advantage, or that an advertiser knew that an unfair advantage would be bestowed”.

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<sup>46</sup> The Irish Times, [Plan to prosecute firms who offer paid-for essays to students](#), (12 March 2017).

<sup>47</sup> Draper Michael J. and Newton Philip M. (2017), International Journal for Educational Integrity, [A legal approach to tackling contract cheating?](#)

The other difficulty faced by the UK proposal was how to draft a law specifically targeting contract cheating while protecting legitimate services such as proof-reading services and private tutoring.

The paper also points to the difficulties posed by the international nature of contract cheating.<sup>48</sup> While acknowledging these difficulties, the paper suggests that there are UK legal principles relating to fraud and bribery which allow for extraterritorial jurisdiction.

The paper highlights a number of other considerations:

- Courts tend to see plagiarism as a matter for academic judgment and so may be reluctant to convict students. (However, the paper states that there are precedents where universities have referred academic misconduct to the police for investigation);
- Prosecution may be hindered by difficulties in proving the existence of a contract;
- It can be difficult to distinguish plagiarism (an intellectual or moral transgression) from fraud (which is a crime).

The paper cites UK and US studies that indicate a high rate of 'ordinary' plagiarism among students (as much as 40%, according to some studies). They suggest that making plagiarism a criminal offence would therefore risks criminalising millions of students. Assuming this is undesirable, the authors suggest that use of criminal sanctions to address contract cheating would require careful consideration.

The person best placed to identify the crime is likely to be another student, a member of the university's staff or parent/guardian. The authors suggest that this may inhibit reporting of contract cheating, though a 'duty to report' could counter this.

Another complication arises where other actors (such as friends and families) themselves provide the cheating services by undertaking the student's assignments.

The authors propose that legislation be used primarily to target large-scale commercial organisations. The spirit of such a law could also act as a deterrent to students outsourcing of work to friends and family.

However, the authors suggest that one of the biggest problems with contract cheating is that it is hard to detect. This leads to problems for policy makers as it is difficult to generate evidence of the success of a legal approach in reducing the incidence of contract cheating. The authors suggest that this could be offset by successful prosecution of commercial contract cheating providers.

The paper concludes by saying that the core relationship between a student, an essay writer and university is governed primarily by civil contract law. The authors state that criminal law could play a role in preventing contract cheating. They acknowledge that civil law, through actions for breach of contract, could also have a role, but say that this would have potential complications that were beyond the scope of the paper.

The authors conclude that, while it is not clear whether a legal approach would be effective, it should be seriously considered.

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<sup>48</sup> A report by the UK's Quality Assurance Agency, [Plagiarism in Higher Education](#) (August 2016), explored the issue of custom essay writing services in UK higher education. This included a review of international approaches. The report reviewed the situation in New Zealand, USA, Australia, and China. It found that custom essay cheating is not just a UK issue and its solution is unlikely to be possible through UK channels alone, particularly given the ability of website providers to register overseas.

## UK guidance on tackling contract cheating

The UK Government asked its Quality Assurance Agency<sup>49</sup> (QAA) to work with Universities UK<sup>50</sup> (UUK) and the National Union of Students (NUS) to develop guidance for higher education providers, as well as stand-alone advice for students.

QAA published a report in October 2017 titled 'Contracting to Cheat in Higher Education.'<sup>51</sup> The aim of this report was to provide guidance to support higher education providers on the problem of contract cheating and on taking steps to address it. It sets out best practice on promoting academic integrity in higher education, and steps providers can take.

The report's recommendations to tackle contract cheating include:

- using information and support for students to place a positive focus on academic integrity;
- ensuring that staff is kept up to date with academic regulations on assessment, and kept aware of their responsibility to uphold academic standards and integrity;
- thinking about how to limit cheating opportunities when designing and reviewing courses and setting assignments;
- considering organisation-wide detection methods;
- having an explicit procedure for reporting a suspicion of academic misconduct, determining who to report to and how to report it.

## Granting of award-making powers to Institutes of Technology

The Bill provides for the granting of award-making powers, with the exception of doctoral awards (level 10 on the NFQ), to all of the Institutes of Technology.

**Designated awarding bodies** are bodies with the legal authority to make awards and to whom the 2012 Act applies. Currently these are:

- the 'previously established universities' (these are the universities to which the [Universities Act 1997](#) applies);
- the National University of Ireland;
- the Dublin Institute of Technology; and
- the Royal College of Surgeons in Ireland.

Designated awarding bodies have responsibilities for quality assurance that are set out in QQI guidelines.<sup>52</sup>

Providers with **delegated authority** are awarding bodies that make their own awards within the scope of the authority delegated by QQI.

Awards made by IoTs under delegated authority<sup>53</sup> are included in the NFQ. Thirteen of the fourteen IoTs operate under this legislative arrangement.<sup>54</sup>

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<sup>49</sup> QQA is an independent not-for-profit organization that works to raise the standards and quality of higher education in the UK. It developed the quality code with organisations in the higher education sector and maintains it on their behalf.

<sup>50</sup> The representative body for universities in the UK.

<sup>51</sup> QQA, [Contracting to Cheat in Higher Education](#), (October 2017).

<sup>52</sup> QQI, [Statutory Quality Assurance Guidelines developed by QQI for Designated Awarding Bodies](#) (July 2016).

<sup>53</sup> QQI's delegation of authority functions are governed by the 2012 Act generally and particularly sections 52-55 of that Act.

<sup>54</sup> THEA, [Quality Assurance](#).

Delegated authority to make an award enables a provider to establish its own award brand and affords it greater autonomy in establishing programmes within classes of programmes in respect of which authority to make awards has been delegated. QQI determines the policy and criteria for awards made under delegated authority and the awards standards that apply to those awards<sup>55</sup>.

In a news release,<sup>56</sup> Dr. Jim Murray of the Technological Higher Education Association<sup>57</sup> (THEA) said:

“While many aspects of the bill have relevance for quality insurance in the institutes generally, one provision is of particular interest to the sector. On foot of discussions with the Department of Education and Skills and QQI over the past number of years, THEA has succeeded in securing the inclusion of an amendment (Section 33) to the [Regional Technical Colleges Act 1992](#), which provides for the granting of award making powers, with the exception of doctoral awards, to all of the Institutes of Technology.

Together, of course, with the TU [Technical University] legislation<sup>58</sup> and the advent of TUs, this will establish the entire technological higher education sector as Designated Awarding Bodies, and put technological higher education institutions on an equal footing with other designated awarding bodies, including the universities, with which they are expected to establish regional and thematic clusters, as per the goals of the National Strategy for Higher Education to 2030.<sup>59</sup>

In addition, when passed, the bill will create a single, coherent quality assurance and qualifications space amongst public higher education institutions, and significantly alter the manner in which the sector engages with QQI.”

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<sup>55</sup> QQI, [Delegation of Authority](#).

<sup>56</sup> Technological Higher Education Sector, [Impact of Qualifications and Quality Assurance \(Education and Training\) \(Amendment\) Bill on the Technological HE Sector](#), (23 July 2018).

<sup>57</sup> On its [website](#) it says, “The Technological Higher Education Association is the voice of the technological higher education sector, advocating on behalf of and supporting our members in achieving their aims and objectives”.

<sup>58</sup> [Technological Universities Act 2018](#). Also see L&RS [Bills Digest – Technological Universities Bill 2015](#).

<sup>59</sup> Department of Education and Skills, Report of the Strategy Group, [National Strategy for Higher Education to 2030](#), (January 2011).

## Principal Provisions

The [Explanatory and Financial Memorandum for the Bill](#) explains that:

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

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

The Bill is divided into three Parts with a total of 36 sections. Given the wide-ranging and technical nature of the amendments proposed in the Bill, the outline below gives only a summary overview.

### General

**Section 1** of the Bill provides for the short title and commencement of the Bill. Once enacted, the provisions of this Bill will come into operation on the day or days to be ordered by the Minister for Education and Skills. Commencement may be made generally or for specific purposes.

### Definitions

**Section 3** of the Bill amends and provides additional definitions to the 2012 Act. **Section 3(2)** addresses issues related to the judgment of the High Court concerning QQI’s statutory powers. It amends section 2(2) of the 2012 Act to provide for QQI to give retrospective validation of an education or training programme. This is discussed further below in relation to section 16 of the Bill.

### Functions of QQI

**Section 4** of the Bill makes technical amendments to existing functions and requirements of QQI, as well as clarifying the addition of some further functions and requirements. These include authorisation to share information with other bodies (including Government Departments and the Revenue Commissioners), but subject to the [Data Protection Act 2018](#). (See also the discussion of **section 5** of the Bill below.)



## Furnishing Information to Other Bodies

**Section 5** of the Bill inserts a new section 14A in the 2012 Act. This provides that, subject to the *Data Protection Act 2018*, QQI may give “appropriate information” to the bodies listed below:

- a Department of State;
- the Office of the Revenue Commissioners;
- An t-Udarás um Ard-Oideachas;
- SOLAS;
- the Central Applications Office; and
- any other body that QQI considers appropriate.

The proposed new section does not define ‘appropriate information’ but its phrasing indicates that the information must relate to the functions of the body concerned.

## Quality Assurance

**Section 6** of the Bill proposes to amend section 27(1) of the 2012 Act, which deals with quality assurance procedures and guidelines. The changes allow for greater flexibility and periodic review of guidelines and reflect the other changes proposed under the Bill.

**Section 7** of the Bill amends section 28 of the 2012 Act, which deals with providers’ obligation to prepare quality assurance procedures in line with guidelines issued by QQI. The changes clarify the scope of application of the procedures to relevant, linked and associated providers<sup>60</sup> and when such procedures will be established.

**Section 8** of the Bill inserts new sections 29A, 29B and 29C in the 2012 Act. The new sections authorise the Minister to make regulations specifying criteria that will give reasonable assurance to QQI that a relevant provider has capacity and capability to implement quality assurance procedures and to provide education and training consistent with the 2012 Act. The criteria may include assessment of the provider’s legal personality, financial resources and corporate governance.

**Section 9** of the Bill amends section 30 of the 2012 Act, which deals with review of quality assurance procedures to be followed by a relevant provider. The amendment clarifies that the section does not apply to ‘previously established universities’.

**Section 10** of the Bill amends section 34 of the 2012 Act to provide that QQI shall consult with SOLAS in its reviews of relevant providers’ quality assurance procedures.

**Section 11** of the Bill amends section 36 of the 2012 Act, which deals with cases where QQI withdraws its approval of a relevant provider’s quality assurance procedures. The amendment permits a relevant provider to give notice to QQI that it no longer wishes its procedures to be approved. QQI may then withdraw its approval without the need for a review of the procedures.

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<sup>60</sup> The terms ‘provider’, ‘relevant provider’, ‘linked provider’ and ‘associated provider’ are defined in section 2 of the 2012 Act. (The term ‘associate provider’ is a new definition introduced by section 2 of the Bill.) In broad terms, a ‘provider’ is a body that provides education or training services; a ‘relevant provider’ is one that provides services or awards validated by QQI; a ‘linked provider’ is one that provides a programme leading to an award from a separate awarding body; and an ‘associated provider’ is one that provides a programme leading to an award from a ‘listed awarding body’ – a new category discussed below in relation to section 22 of the Bill.

**Section 12** of the Bill provides that QQI must consult with SOLAS whenever QQI conducts a quality review that relates to a relevant provider engaged in further education and training and has been funded under [section 21 of the \*Further Education and Training Act 2013\*](#).

## Framework of Qualifications

**Section 13** of the Bill amends section 43 of the 2012 Act to broaden QQI's functions in relation to the development and review of the National Framework of Qualifications (NFQ). It also requires awarding bodies to ensure that learners "acquire the standard of knowledge, skill or competence associated with the level of [an] award within the Framework before and when the award is made". (The process for inclusion of awards within the Framework is provided for by new sections 55A to 55I, inserted by **section 22** of the Bill, discussed below.)

## Offence of Providing or Advertising Cheating Services

**Section 14** of the Bill proposes a new section 43A of the 2012 Act. This makes it an offence if a person:

- undertakes work that an enrolled learner is required to undertake as part of a programme without authorisation of the person who made the requirement;
- sits an examination that an enrolled learner is required to sit, or provides another person to sit the exam, without authorisation of the person who set the examination;
- provides or arranges the provision of answers for an exam to an enrolled learner, without authorisation of the person who sets the examination.

A person who intends to give an enrolled learner an unfair advantage over others commits an offence if they:

- provide or arrange provision of an assignment that an enrolled learner is required to undertake without authorisation of the person who makes the requirement;
- before an exam that an enrolled learner is required to take, provide or arrange the provision of answers to the exam without authorisation of the person who sets the examination.

A person also commits an offence if they advertise that they will perform any service relating to any of the acts proscribed above, or publish an advertisement for such services.

Offences are listed in section 5 of the 2012 Act. Under section 5(3), a person who commits an offence under the Act is liable on summary conviction to a class A fine (up to €5,000), imprisonment for up to 12 months or both; on conviction on indictment to a fine not exceeding €100,000, imprisonment for up to 5 years or both.<sup>61</sup>

These offences do not pertain to post-primary schooling i.e. the Junior or Leaving Certificate examinations or other exams to which Part VIII of the *Education Act 1998* applies.<sup>62</sup>

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<sup>61</sup> Other offences under the Bill relate to removal or damaging of notices being served on a person and where a member of QQI or a consultant discloses confidential information obtained by him/her in performing their functions without being authorised by QQI to do so. These can be prosecuted summarily and can lead to a class A fine.

<sup>62</sup> Part VIII applies to the following: Leaving Certificate Examination; Junior Certificate Examination; Technological Certificate Examination; Trade Certificate Examination; Certificate in Commerce Examination; Ceardteastas Gaeilge Examination; Teastas i dTeagasc na Gaeilge Examination; Typewriting Teachers Certificate Examination; Commercial Instructors Certificate Examination. Section 50(2) of that Act authorises the Minister for Education to designate other exams as he or she considers appropriate.

## Validation of Programmes of Education and Training

**Section 15** of the Bill amends section 44 of the 2012 Act to include education and training boards and (in respect of doctoral programmes) Institutes of Technology in the list of providers who must obtain QQI's validation of their programmes.

**Section 16** of the Bill amends section 45 of the 2012 Act to provide for cases where a validation given by QQI expires before a student's completion of a programme commenced while it was in effect. In such cases, the new subsections (1A) and (1B) will deem the validation to have continued in effect for the purposes of that programme.

**Section 17** of the Bill amends section 47 of the 2012 Act, dealing with withdrawal by QQI of its validation of a programme. The new subsection (6) allows QQI to withdraw a validation without a review if so agreed by QQI and the provider, if the provider notifies QQI that it no longer wishes to provide the programme, or if the programme is has not been offered or had students enrolled for 2 years.

## Arrangement between Providers and Awarding Bodies other than QQI

**Section 18** of the Bill amends section 48 of the 2012 Act, which deals with providers that have arrangements with awarding bodies other than QQI. The new provision will allow these providers a transitional period of 5 years before new arrangements for inclusion of awards in the National Framework of Qualifications (as provided for in **section 22** of the Bill) take effect.

## Making an Award

**Section 19** of the Bill makes amendments to section 50 (making of an award) of the 2012 Act that are consequential to amendments to section 56 of the 2012 Act.

## Delegation of Authority to Make Awards

**Section 20** of the Bill makes a number of amendments to section 52 of the 2012 Act, which deals with procedures for providers to request QQI to delegate to them authority to make their own awards. The proposed amendments relate to the quality assurance procedures that will apply and define classes of education and training programmes for which authority may be delegated. The amendments also provide for IoTs to request delegated authority for awarding doctoral degrees.

**Section 21** of the Bill amends section 53 of the 2012 Act, which deals with QQI's determination of requests for delegation of authority to make an award. The amendment is intended to ensure consistency of application of protections for enrolled learners proposed in section 28 the Bill.

## Process by for Including New Awards in the Framework

**Section 22** of the Bill provides for the insertion of new sections 55A to 55I into the 2012 Act. These new sections provide for the establishment of a list of awarding bodies whose awards, subject to satisfying particular criteria, will be included in the NFQ.

The new sections detail policies and procedures, duties of listed awarding bodies, and the criteria on which QQI will review the list of awarding bodies.

## Review of Implementation of Procedures for Access, Transfer and Progression

**Section 23** of the Bill amends section 57 of the 2012 Act, which deals with procedures for QQI to review periodically the procedures of relevant providers concerning learners' access, transfers and progression. The amendment provides that QQI must consult with SOLAS when carrying out a review of a provider's procedures.

## Code of Practice for Provision of Programme to International Learners

**Section 24** of the Bill amends section 57 of the 2012 Act. The amendment provides for QQI to extend the International Education Mark Code of Practice. The extended Code is intended to be complied with by providers of education and training services to learners enrolled outside the State on programmes that lead to awards included in the NFQ.

QQI may establish different codes of practice for different providers and classes of programmes.

## International Education Mark

**Section 25** of the Bill makes amendments to section 61 of the 2012 Act, which deals with QQI's power to specify and authorise the use of the IEM. These facilitate introduction of the IEM in various forms for different groups of providers or class of programmes, including English language education and training.

**Section 26** of the Bill amends section 61 of the 2012 Act to allow QQI to withdraw authorisation for a provider's use of the IEM without conducting a review if the provider gives notice to QQI that it no longer wishes to be so authorised.

## Protection of Enrolled Learners

**Section 27** of the Bill amends section 64 of the 2012 Act. It expands the scope of protections of enrolled learners to those who are enrolled in English language programmes, and defines a number of related terms.

**Section 28** of the Bill amends section 65 of the 2012 Act to provide for establishment of a Learner Protection Fund. Certain providers (except those listed e.g. previously established universities, technological universities and IoTs) will pay an annual charge into the fund.

**Section 29** of the Bill replaces section 66 of the 2012 Act. The replacement section provides that QQI will establish, maintain and operate a fund called the Protection of Enrolled Learners Fund, also called the Learner Protection Fund in the Bill.

In the event of default of a protected programme, monies from the fund may be used by QQI to:

- defray costs of completion of the enrolled learner programme, where its possible to complete it;
- defray payment of fees for transfer onto another similar programme provided by another provider;
- if neither of the above is possible, pay a refund to the enrolled learner or the person who paid the monies for the programme.<sup>63</sup>

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<sup>63</sup> This includes tuition fees, registration fees, examination fees, library fees, student services fees and any other fees paid by or on behalf of the learner to the provider (or any intermediary) which relate to the provision of education, training and related services.

Where these steps do not provide a similar outcome for the learner, QQI will make efforts to ensure an alternative programme of education by another provider is made available, so that the learner has an opportunity to complete a programme similar to the one they commenced.

The new section 66 also provides for governance and operational matters of the Fund, including that QQI will publish an annual report on the operation of the Fund.

**Section 30** of the Bill proposes a new section 66A relating to regulations in relation to payment of annual charges into the Learner Protection Fund and related matters.

The Minister will prescribe the amount of annual charge to be paid by a provider. A different amount may apply in respect of different classes of providers and programmes. A class of programme may be defined by reference to the number of enrolled learners, the number of enrolled international learners, the duration of the programme, the level of fees charged or any other criterion the Minister considers relevant.

Providers that fail to pay by the prescribed date must pay an additional amount.

The Minister, with consent by the Minister of Public Expenditure and Reform, may pay monies provided by the Oireachtas into the fund, as considered appropriate.

If a provider defaults on the annual charge or amount prescribed, it may be recovered in court by QQI as a contract debt.

**Section 31** of the Bill amends section 67 of the 2012 Act, which requires providers to furnish certain information to enrolled learners. If a learner has completed a programme, the provider must notify the learner of the award, including whether the award is “included in the NFQ”. This is a change from the current requirement to notify if the award was “recognised by the NFQ”.

## Database of Awards Recognised in the NFQ

Section 79 of the 2012 Act provides that QQI must establish and maintain a database providing information on awards “recognised” in the NFQ, programmes of education and training that lead to such awards and any other programmes QQI considers appropriate.

**Section 32** of the Bill proposes to amend this section so that it refers to awards that are “included” in the NFQ.

The programmes in question do not include post-primary schooling leading to the Junior or Leaving Certificate examinations, or others provided for in Part VIII of the *Education Act 1998*.

## Fees

**Section 33** of the Bill amends section 80 of the 2012 Act, which deals with fees. Section 80 provides that QQI, with Ministerial consent, may determine fees payable by a provider or a learner to QQI for various procedures and reviews.

The amendment updates the application of fees to reflect changes in this Bill, such as fees for application for inclusion on the list of an awarding body.

## Transnational and Savings Provision

**Section 34** of the Bill amends section 84 of the 2012 Act, which continued established and agreed quality assurance procedures and validation of programmes for relevant providers under previous Acts. The Bill proposes that such procedures and validations will cease to have effect after 3 years

from the commencement of section 34 unless they are re-submitted to QQI for approval or replaced under the provisions of the 2012 Act.

### **Amendment of *Regional Technical Colleges Act 1992***

**Section 35** of the Bill proposes to amend section 5 (functions of colleges) of the *Regional Technical Colleges Act 1992*. The amendment provides IoTs with award-making powers, but not for doctoral awards. These awards can be given only on recommendation of the academic council of the colleges.

Designated awarding bodies are bodies with legal authority to make awards. Currently this applies to universities and the Dublin Institute of Technology and the Royal College of Surgeons in Ireland.

As it currently stands, awards made by IoTs are under delegated authority from QQI. Thirteen of the fourteen IoTs operate under this legislative arrangement.

### **References in other Enactments to Awards Recognised in Framework**

**Section 36** of the Bill proposes that references in any other Act or instrument to awards “recognised” in the NFQ will be taken to refer to awards “included” in the NFQ.



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