

**General Scheme of a  
Qualifications and Quality Assurance (Amendment) Bill**

HECA comments – May 2017

<b>Head No.</b>	<b>Head Description in Draft Bill</b>	<b>Explanatory Note</b>	<b>Summary of effect of proposed amendment</b>	<b>HECA Comment</b>
<b>Head 1</b>	<b>Short Title and Commencement</b>	<i>Head 1 sets out the title of the proposed Act and makes provision for commencement</i>	Sets out the title of the proposed Act and makes provision for commencement.	Note that different sections can be activated at different times by Ministerial order.
<b>Head 2</b>	<b>Amendment of Section 2 of Principal Act (Interpretation)</b>	<i>Head 2 defines the key terms used in the General Scheme. Many of the definitions are taken from the Principal Act with necessary amendments.</i>	The main effects of the definitions are to provide for listed awarding bodies and the providers they will validate "associated providers". Also Institutes of Technology are now "designated awarding bodies" It appears that we are no longer "relevant providers" which (though the amendment is not clear) appears now to be confined to institutes of technology, education and training boards and listed awarding bodies. Under the revised definition validations will now be time limited.	The implications of this change are not clear at this point. We need clarification on the precise definition of relevant provider.
<b>Head 3</b>	<b>Amendment of Section 9 of Principal Act (Functions of Authority)</b>	<i>Head 3 provides for amendments to the functions of Quality and Qualifications Ireland (QQI), including specific statutory functions for the inclusion of awards within the National Framework of Qualifications and the listing</i>	Amended functions of QQI including review of quality assurance procedures, including awards in NFQ and listing awarding bodies.	Does not seem to be controversial.

		<i>of awarding bodies.</i>		
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<b>Head 4</b>	<b>Amendment of Section 14 of Principal Act (Directions of Authority as to provision of information)</b>	<i>Head 4 provides for a specific legislative function for QQI of sharing relevant information with other State bodies.</i>	This amendment provides for sharing information with other government departments, consulting with SOLAS and conducting investigations it considers necessary and publishing related reports.	Does not seem to be controversial.
<b>Head 5</b>	<b>Amendment of Section 27 of Principal Act (Quality Assurance)</b>	<i>Head 5 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.</i>	Amended quality assurance functions of QQI including amended quality assurance guidelines and effectiveness review procedures, consultation with SOLAS re ETB providers and different guidelines for different linked or associated providers.	Does not seem to be controversial. Is it the intent to have different quality assurance guidelines for IOTs and ETBs than for HECA providers? Are we relevant providers? Is this topic / provision specific or focused on different guidelines for different groups of providers?
<b>Head 6</b>	<b>Amendment of Section 28 of Principal Act (Obligation of providers to prepare quality assurance procedures)</b>	<i>Head 6 contains provisions to clarify the scope of quality assurance procedures established by providers having regard to the guidelines issued by QQI. A new clause is also included to clarify that QQI's quality assurance remit does not extend to general education provision within the school sector. This role is performed primarily by the Inspectorate of the Department of</i>	Amendments including requirement for establishment of quality assurance procedures by associated providers and exclusion of the school sector.	Does not seem to be controversial.

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<p><b>Head 7</b></p>	<p><b>Amendment of Section 29 of Principal Act (Quality assurance procedures and previously established universities)</b></p>	<p><i>Head 7 provides for the establishment by QQI, by way of Ministerial regulations, of procedures and criteria that should be fulfilled by independent and private education and training providers coming to QQI on a voluntary basis to develop a quality assurance relationship. The intention is that 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 extended by means of statutory instrument so as to provide for regulatory responsiveness to innovative modes of provision and forms of provider organisation.</i></p>	<p>New criteria for eligibility will include legal identity, business viability, corporate good standing, capacity and capability to implement quality assurance procedures and to provide programs under QQI requirements.</p>	<p>The new Section 29A appears to apply to private providers. Should also be noted that unacceptable variation or cessation in applicability of these conditions might lead to withdrawal by QQI of validation of a program. We need to ask how subjective QQI is empowered to be in its judgement in this connection. The legislation should include a right of appeal against the decision made under Section 29A (8) to withdraw approval of procedures. Addendum to 29A(2) In drafting these regulations the Minister shall have regard to (i) the nature and extent of provision by existing relevant providers other than those listed in Section 65(5) (ii) the desirability of encouraging niche provision</p>
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<b>Head 8</b>	<b>Amendment of Section 30 of Principal Act (Quality assurance procedures and relevant providers, other than previously established universities)</b>	<i>Head 8 contains provisions to allow QQI to impose conditions on an education and training 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 which might impact on the delivery of programmes leading to QQI awards. Failure to comply with such conditions may result in the withdrawal of quality assurance approval.</i>	Amendments re QQI approval of quality assurance procedures and subsequent review only in the event of (1) individual program validation, (2) a review of validation, (3) a request for delegated authority, (4) an application for the IEM or (5) an institutional review.	Does not seem to be controversial.
<b>Head 9</b>	<b>Amendment of Section 34 of the Principal Act (Review by Authority of Quality Assurance Procedures of Relevant Providers)</b>	<i>Head 9 contains provisions to allow QQI to consult with SOLAS when conducting a review of the quality assurance procedures of further education and training providers. This parallels existing provisions for consultation with the Higher Education Authority in respect of reviews of higher education institutions and is consistent with Heads 11 and 20.</i>	Amendment providing for consultation with SOLAS re ETB providers.	Does not seem to be controversial.
<b>Head 10</b>	<b>Amendment of Section 36 of Principal Act</b>	<i>Head 10 provides for a withdrawal of approval by QQI of quality assurance procedures without</i>	Allows withdrawal of QA approval by mutual consent.	Does not seem to be controversial.

	<b>(Withdrawal by Authority of approval of quality assurance procedures)</b>	<i>review. This would be appropriate in 'no-contest' cases where a relevant provider and QQI mutually consent to that provider ceasing to be a relevant provider.</i>		
<b>Head 11</b>	<b>Amendment of Section 42 of the Principal Act (Quality Reviews by Authority)</b>	<i>Head 11 contains provisions to allow QQI to consult with SOLAS when conducting quality reviews of further education and training providers. This parallels existing provisions for consultation with the Higher Education Authority in respect of reviews of higher education institutions and is consistent with Heads 9 and 20.</i>	Provides for consultation with SOLAS re ETB providers	Does not seem to be controversial.



<p><b>Head 12</b></p>	<p><b>Amendment of Section 43 of Principal Act (Framework of Qualifications)</b></p>	<p><i>Head 12 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. This Head contains provisions for the establishment by QQI of policies and criteria for awards to be included within the Framework. This process will entail scrutiny of awarding bodies and scrutiny of qualifications to ensure that they are fit for purpose and appropriately positioned within the Framework. This Head also provides for the establishment of different policies and criteria for different awards and different awarding bodies, and for a review of these policies and criteria at least once in every five year period.</i></p> <p><i>Head 12 also contains provisions to provide QQI with powers to prosecute essay mills</i></p>	<p>This amendment makes significant changes to the awards policies and criteria including different awards policies and criteria for different awards and awarding bodies, 5 year review of policies, awards being subject to conditions, governing factors for policies and criteria and making it an offence to provide cheating services.</p>	<p>Controversial aspects include:-</p> <p>(1) different awards policies and criteria for different awards and awarding bodies, i.e. a different set of validation rules for universities and IOT"s, on the one hand and privates on the other. It is incumbent on QQI as the national quality assurance body to explain and justify why different policies and criteria should apply to different providers providing similar awards at the same level of the Framework.</p> <p>(2) a limitation proposed on competing awards which could be anti-competitive. We propose that the new Section 43(14) (b) be amended to be prefaced by the following words "Except in the case of awards not funded by the State".</p>
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		<i>/ other forms of academic cheating. These provisions are modelled on similar legislation introduced in New Zealand.</i>		
<b>Head 13</b>	<b>Amendment of Section 44 of Principal Act (Application for validation of programme of education and training)</b>	<i>One of the conditions before applying to QQI to have a programme validated is that a provider must have previously established procedures for quality assurance. However the quality assurance procedures established by a provider at a particular time will generally not be suitable for all conceivable programmes that the provider may seek to have validated. Head 13 contains provisions for requiring that a provider's quality assurance procedures are fit-for-purpose in the context of the proposed programme being submitted to QQI for validation.</i>	This amendment ensures that a provider's quality assurance procedures are fit for purpose for a proposed programme.	Not controversial.
<b>Head 14</b>	<b>Amendment of Section 45 of Principal Act (Determination of application for</b>	<i>Head 14 provides that validation by QQI of programmes of education and training will be time-limited.</i>	This amendment provides that validations of proposed programmes be time limited	Not controversial

	<b>validation of programme of education and training)</b>			
<b>Head 15</b>	<b>Amendment of Section 47 of Principal Act (Withdrawal of programme validation)</b>	<i>Head 15 provides for the occasions when QQI can withdraw programme validation without conducting a review.</i>	This amendment provides for termination of validation by mutual consent or when a programme has not run for two years.	A programme may not run for 2 or more years for several reasons. In any event its validation will be time limited. Given the cost of validation both in fees and document preparation withdrawal after only a two year lapse of provision seems unreasonable.
<b>Head 16</b>	<b>Amendment of Section 48 of Principal Act (Arrangement between providers and awarding bodies other than the Authority)</b>	<i>Head 16 provides for a transition period to allow QQI to establish and implement the new scheme for listing awarding bodies and the inclusion of their awards in the National Framework of Qualifications. The transition period will allow the Institutes of Technology and the 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.</i>	This amendment provides for a transitional 5 year period when ETB's and IOT's can continue to provide awards of other bodies though not listed on the Framework	Not controversial but should also apply to private providers making such arrangements within the next 5 years if not already free to do so
<b>Head 17</b>	<b>Amendment of</b>	<i>Head 17 contains provisions to</i>	This amendment provides for learners	Not controversial

	<b>Section 50 of Principal Act (Making of an award)</b>	<i>clarify 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.</i>	seeking access to Recognition of Prior Learning processes to apply in the first instance to the provider.	
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<b>Head 18</b>	<b>Amendment of Section 52 of Principal Act (Request by provider for delegation of authority to make award)</b>	<i>Head 18 provides for provisions to allow 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 focused approach to delegating authority where it is warranted.</i>	This amendment provides for review of QA procedures by QQI where delegated authority is sought and for restrictions of delegated authority to classes of programmes in any grouping considered expedient by QQI.	Not controversial
<b>Head 19</b>	<b>Amendment of Section 55 of Principal Act (Withdrawal or variation by Authority of delegated authority to make award)</b>	<i>Head 19 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</i>	This amendment provides for QQI to produce policies and criteria including eligibility criteria for the listing of an awarding body which could include a requirement for an endorsement by a Public authority, a minister, HEA, SOLAS, a professional body or a university. The amendment sets out detailed recognition review and withdrawal procedures	Could HECA or any of its member colleges become a listed awarding body?

		<i>Framework.</i>		
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<b>Head 20</b>	<b>Amendment of Section 57 of the Principal Act (Review by Authority of implementation of procedures for access, transfer and progression)</b>	<i>Head 20 contains provisions to allow QQI to consult with SOLAS when conducting reviews of the procedures for access, transfer and progression in respect of further education and training providers. This parallels existing provisions for consultation with the Higher Education Authority in respect of reviews of higher education institutions and is consistent with Heads 9 and 11.</i>	This amendment provides for consultation by QQI with SOLAS where reviewing access transfer and progression procedures of ETB's.	Not controversial
<b>Head 21</b>	<b>Amendment of Section 60 of Principal Act (Code of Practice for provision of programme to international learners)</b>	<i>The International Education Mark (IEM) Code of Practice currently covers international learners in the State. Head 21 provides for an extension of the remit of the 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. Head 21 also removes the requirement for QQI to consult with Fáilte Ireland on the Code of Practice. When QQI was established in 2012 Fáilte Ireland had responsibility for marketing Ireland's English language</i>	This amendment provides for QQI to establish the Code of Practice for international learners both inside and outside the State needed by a provider seeking to use the IEM.	There is a new subsection 60(1) (A) allowing for different codes for different providers. What is the justification for this?

		<i>education sector to non-EU markets. Since 2016, Enterprise Ireland has assumed this responsibility.</i>		
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<b>Head 22</b>	<b>Amendment of Section 61 of Principal Act (International Education Mark)</b>	<i>Head 22 contains provisions to ensure that the International Education Mark will only be awarded to those education and training providers with relevant quality assurance oversight. Head 22 also provides for variants of the International Education Mark in the future.</i>	This amendment provides for eligibility for the IEM for some or all programmes following review of QA procedures (except universities) and for different marks for different groups of providers.	Controversial elements include:- (1) Universities exception from review of QA procedures. The same QA procedures for provision to international learners and review thereof should apply to all providers equally and (2) variant forms of mark for different groups of providers. Different marks for different HE providers providing similar awards on the Framework is completely unacceptable.
<b>Head 23</b>	<b>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)</b>	<i>Head 23 provides for a withdrawal by QQI of authorisation to use the International Education Mark without a review in cases where an education and training provider has notified QQI that it no longer wishes to be authorised to use the Mark.</i>	This amendment provides for withdrawal of the IEM authorisation by QQI by mutual consent.	Not controversial

<p><b>Head 24</b></p>	<p><b>Amendment of Section 65 of Principal Act (Arrangements by providers for protection of enrolled learners)</b></p>	<p><i>Head 24 contains provisions to facilitate the introduction of a Learner Protection Fund by QQI. Provisions are included to exempt public bodies, such as the Royal College of Surgeons in Ireland, the Education and Training Boards and the Royal Irish Academy of Music, from PEL requirements and to introduce new PEL 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).</i></p>	<p>This amendment provides for the new Learner Protection Fund.</p>	<p>Controversial elements include:-</p> <p>(1) Exclusion of universities and IOT's from requirement for learner protection and hence from contribution to Learner Protection Fund. It has been stated that the proposed scheme is based upon the Australian scheme. It should be noted that under this scheme the universities receiving 92% of international students participate in the Learner Protection Scheme with the result that the annual levy is 0.1% of student fees.</p> <p>(2) Participation in Learner Protection Fund not being optional for groups of providers such as HECA who have already set up Learner Protection arrangements approved by QQI,</p> <p>(3) The inclusion in 65(3) exempt providers of RCSI and RIAM but not HECA.</p> <p>We propose that Section 65(3) be amended to exclude the additional exemption as follows: “(0) any member college of the Higher Education Colleges Association providing a learner protection arrangement approved by QQI at the time of the passing of this Act”.</p> <p>(4) The requirement for fees received more than 40 days in advance of the course to be lodged in an escrow account. These are totally unworkable and acknowledged as such by the Department of Justice. It is also unclear for how long the funds must be held in the escrow accounts. It is also unreasonable to require that the Learner Protection levy be paid while the student fees are locked in</p>
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				<p>an escrow account.</p> <p>While the espoused aim of QQI is to follow the Australian scheme, there is little evidence in the Amendment Act that the comprehensive institutional risk assessment carried out under the Australian scheme will be replicated in Ireland. The requirement to provide the information referred to in S66 (B) (4) (a) should also extend to a liquidator, receiver or examiner and be covered by appropriate facilitation from the viewpoint of data protection.</p>
<b>Head 25</b>	<b>Amendment of Section 66 of Principal Act (Assistance from Authority to enrolled learners to find alternative programme)</b>	<i>Head 25 contains provisions for the establishment, governance and operation of the Learner Protection Fund.</i>	This amendment provides for the application of Learner Protection Fund monies to fund transfers of learners to alternative courses.	Nothing controversial except compulsion element.
<b>Head 26</b>	<b>Amendment of Section 79 of Principal Act (Database)</b>	<i>Head 26 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.</i>	This amendment provides for exclusion of secondary level awards from the QQI database of awards.	Not controversial
<b>Head 27</b>	<b>Amendment of Section 80 of Principal Act (Fees)</b>	<i>Head 27 provides a legal basis for QQI to charge fees for certain services to education and training</i>	This amendment provides for fees to be chargeable by QQI in respect of its new functions under the Amendment	The Head provides that QQI may provide for the periodic payment of fees on a consolidated basis. It is not clear what this means. Clarity is

		<i>providers.</i>	Bill	required.
<b>Head 28</b>	<b>Amendment of Section 84 of Principal Act (Transitional and savings provision for Act of 1999)</b>	<i>Head 28 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 programmes will be time-limited</i>	This amendment provides for providers with HETAC approval of QA having to apply within 3 years for QQI approval and for transitional HETAC programme validation to be time limited as determined by QQI.	Not controversial

<b>Head 29</b>	<b>Amendment of Regional Technical Colleges Act of 1992</b>	<i>Head 29 provides for the extension of award making powers at all levels of the National Framework of Qualifications, with the exception of doctoral degrees, to all of the Institutes of Technology. It also supports this by strengthening the autonomy of the Academic Council of the Institutes.</i>	This amendment provides for extension of degree awarding powers except at doctoral level to the IOT's.	Not controversial except what about institutions with delegated authority.
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