



QQI

Quality and Qualifications Ireland  
Dearbhú Cáilíochta agus Cáilíochtaí Éireann

# WHITE PAPER

## Regulations for Protection of Enrolled Learners: Implementation of Part 6 of the 2012 Act

FOR CONSULTATION

*QQI White Papers contain proposed QQI policy for public consultation and information. Following publication and consideration of the outcomes of consultation, they lead to Draft QQI Policy which is adopted by the Board of QQI. Once adopted, QQI policy and procedures are developed and implemented accordingly.*

This White Paper proposes regulations for providers' compliance with legal requirements for the Protection of Enrolled Learners.

QQI is seeking feedback from stakeholders on the policies and regulations contained in this White Paper.

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Submissions can be emailed to  
**[consultation@QQI.ie](mailto:consultation@QQI.ie)**

The closing date for submissions  
is **Tuesday 27th August 2013.**

In your submission please clearly indicate:

1. *Your contact details.*
  2. *Whether you are responding as an individual or on behalf of an organisation.*
  3. *If you do not wish your submission to be published.*
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## 1 INTRODUCTION

The regulations set out in this document have been developed to facilitate providers in the fulfilment of their legal obligations in regard to PEL. The 2012 Act sets out these obligations in some detail and establishes that it is the responsibility of providers to ensure that there are adequate arrangements in place for the protection of enrolled learners on specified programmes.

Notwithstanding the responsibility of providers to have arrangements for PEL in place, QQI has the authority to request that any relevant provider assists in the accommodation of learners affected by the cessation of a programme.

These regulations apply to different extents to different categories of provider:

- a) **All providers of education and training in the state regardless of their relationship with QQI** have an obligation to make certain categories of information available to learners (regulations 2.2 apply).
- b) **Private, voluntary and public providers not expressly exempted (listed below) with QQI validated programmes, or delegation of authority (DA) to make awards; that charge fees and offer programmes of three months or longer duration** have an obligation to demonstrate compliance with the legal requirements for PEL (regulations 2.2, 2.3, 2.4, 2.5 and 2.6 apply). These regulations will apply to these providers when:
  - i. Submitting programmes for validation.
  - ii. An existing validated programme is subject to review of validation by QQI.
  - iii. Seeking delegated authority<sup>1</sup> to make an award in respect of a validated programme.
  - iv. Submitting a proposal for the inclusion of an additional award(s) under delegation of authority to make awards.
- c) **All relevant providers (including public providers)** shall assist QQI in the placement of learners affected by the cessation of a programme if requested (regulations 2.6 apply).

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<sup>1</sup> The 2012 Act extends the right to seek delegation of authority to make awards to providers who fulfil the regulations set out by the Minister of Education and Skills in this area. Such regulations have yet to be established.

The following providers are exempted under the legislation from the specific requirement to put arrangements in place for PEL (regulations 2.3, 2.4 and 2.5) for programmes offered:

- a) A previously established university.
- b) An educational institution established as a university under Section 9 of the Act of 1997.
- c) The Dublin Institute of Technology.
- d) An Institute of Technology.
- e) SOLAS.
- f) The National Tourism Development Authority.
- g) Teagasc.
- h) An Bord Iascaigh Mhara.
- i) An educational or training institution established and maintained by an Education and Training Board (ETB).
- j) A recognised school.

**TABLE 1: SUMMARY OF OBLIGATIONS AS THEY APPLY TO CATEGORIES OF PROVIDERS.**

	INFORMATION TO LEARNERS	PUT SPECIFIC PEL ARRANGEMENTS IN PLACE FOR PEL-REQUIRED PROGRAMMES	ASSIST IN THE PLACEMENT OF AFFECTED LEARNERS
Regulations:	2.2	2.3 - 2.5	2.6
All relevant providers, including public providers.	Yes	No	Yes
Relevant private, voluntary and public providers of QQI validated programmes or with DA (not including exempt categories and IoTs) who charge fees and offer programmes of three months or longer duration.	Yes	Yes	Yes
Non-relevant providers.	Yes	No	No

## 1.1 LEGAL INTERPRETATION

Protection of Enrolled Learners is a feature of the 2012 Act. A similar provision was set out in the Qualifications (Education and Training) Act 1999 (the 1999 Act) which the 2012 Act repealed and replaced.

The purpose of this legislative provision is to ensure that learners enrolled on a programme are not disadvantaged in the event of the programme ceasing prior to completion.

The provisions of the 2012 Act seek to ensure that:

- » Learners have every opportunity to complete a programme leading to an award, or
- » In the event that completion of a programme is not possible, that learners are refunded the monies they have paid, or that have been paid on their behalf; and that
- » Learners are furnished with adequate and accurate information about the programme of education and training that they wish to pursue and the safeguards in place in the event that the programme ceases prior to completion by learners.

To reinforce this, the 2012 Act gives specific mention to PEL in Parts 5 and 6 and outlines the requirements for compliance by providers. Within the 2012 Act, “Protection of Enrolled Learners” refers only to programmes of three months duration or more where fees have been paid by or on behalf of learners.

Under the 2012 Act, acceptable arrangements for PEL comprise either arrangements with at least two other providers to facilitate the transfer of learners to similar programmes or, where this is not practicable, arrangements for the refund of moneys most recently paid.

For the purposes of these PEL regulations, QQI has interpreted the terms used in the 2012 Act as follows:

### Three months’ duration:

*Three calendar months, regardless of mode or nature of delivery or volume of learning. When determining whether a programme meets this criterion, the period from the commencement of instruction to the point when learners have been assessed for the purposes of completing the programme should be considered.*

## A similar programme:

*One that leads to the same award type<sup>2</sup> in the same field of learning at the same NFQ level, and with broadly similar learning outcomes. A programme which meets these requirements may be deemed as similar regardless of differences in mode, duration or place of delivery.*

## Moneys most recently paid:

*For programmes of up to one year in duration, a provider must have adequate arrangements in place to meet a claim for refund in respect of the full duration of such programmes. In respect of programmes the duration of which is greater than the equivalent of one year, and where fees and other payments are required to be made by the learner for each year, a provider must have adequate arrangements in place to meet a minimum of one year's provision of claim for refund available at all times. In summary, learners are entitled to the refund of up to one year of moneys paid.*

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<sup>2</sup> An award-type is a class of named awards sharing common features and NFQ levels. At each level in the Framework there is at least one award-type. Each award-type has its own award-type descriptor. For further information please see: [Determinations for the Outline National Framework of Qualifications](#)

## 2 REGULATIONS

### 2.1 GENERAL REGULATIONS

- 2.1.1** All providers must make certain programme and award-related information available to learners prior to enrolling learners or accepting payment in respect of a programme of education and training.
- 2.1.2** Relevant providers, other than those exempted under the 2012 Act (exemptions outlined in the introduction), must agree an overall policy and procedures for the protection of enrolled learners (PEL) with QQI as part of their quality assurance (QA) agreement with QQI. Such providers must also have specific PEL arrangements in place in respect of each programme of three months' duration or more where fees have been paid by, or on behalf of, the learner and for which validation or delegation of authority to make an award is sought from QQI.
- 2.1.3** All relevant providers, including public providers, have a duty to assist QQI in the accommodation of learners affected by the cessation of a programme if requested, and this request shall be reflected in their (QA) agreement with QQI.
- 2.1.4** Public providers should consider PEL implications when entering into collaborative and joint awarding arrangements with PEL-required providers. PEL should be addressed in the contractual arrangements underpinning collaborations.
- 2.1.5** Learners will be protected by PEL arrangements from the time that fees are paid, in part or in whole, for enrolment on a programme of education and training of three months' duration or longer, until such time as the learners have received certification for the learning achieved.

## 2.2 INFORMATION FOR LEARNERS

2.2.1 All providers must make the following information publicly available and accessible on their websites and in other published material before enrolling learners or accepting any payment from, or on behalf of, an enrolled learner in respect of a programme of education and training:

- a) The name of the awarding body (or bodies) making the award.
- b) The title of the programme and the award to which it leads.
- c) Whether the award is recognised within the National Framework of Qualifications (NFQ), and if so:
  - i. The level of that recognition within the NFQ.
  - ii. Whether the award is a Major, Minor, Special Purpose or Supplemental award as identified within the NFQ.
- d) That successful completion of the programme by the learner does not lead to an award, but rather a certificate of completion or similar, where that is the case.
- e) Where the provider is required to have procedures for access, transfer and progression in place under Section 56 of the 2012 Act, a statement of how those procedures apply to that programme.
- f) The details of the arrangements for PEL that the provider has in place in accordance with Section 65(4) of the 2012 Act, or where no PEL arrangements are in place, that this fact be made clear.

Relevant protocols should be adhered to<sup>3</sup>.

2.2.2 Providers must notify enrolled learners in writing of any change in the information notified to the learners within 14 days of becoming aware of that change.

2.2.3 Under Section 67 (3) of the 2012 Act, it is an offence for a provider to fail to notify learners of the information set out under sections 2.2.1 and 2.2.2 of these regulations or to provide false or misleading information in purported compliance with these sections

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<sup>3</sup> Protocols for the provision of information of learners will be made available following public consultation on the Green Paper on the Provision of Information for Learners.

2.2.4 Relevant providers must publish their PEL arrangements and prospective learners must be notified of the arrangements prior to commencement of a programme, including either:

- a) The names and contact details of the alternate providers and the names of the alternate programmes; or
- b) A summary of the refund arrangements that are in place.

And

- c) A statement that, in the event of the implementation of a PEL arrangement, learner data may be shared with alternate providers and QQI.

## 2.3 ARRANGEMENTS FOR PEL

2.3.1 The provider shall submit details in writing to QQI of the arrangements the provider has in place for PEL when:

- a) Applying to QQI for programme validation.
- b) Submitting a request to QQI for DA to make an award.
- c) Notifying QQI of a proposal to make an additional award(s) in respect of a class of programme for which DA was granted, but which was not specified in the original request for DA.

2.3.2 The “arrangements in place” comprise:

- a) An agreement between the provider of the programme and *at least 2 other providers*<sup>4</sup> that an enrolled learner may transfer to a similar programme of those other providers; or
- b) Where the provider considers (with the agreement of QQI) that it is not practicable to comply with regulation 2.3.2.a), that provider has arrangements in place which enable that provider to refund to an enrolled learner, or to the person who paid the moneys on behalf of the enrolled learner, the moneys most recently paid in respect of the programme concerned for:
  - i. Tuition fees.
  - ii. Registration fees.

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<sup>4</sup> While arrangements must be in place with at least two other providers, please note that arrangements are not limited to two providers, but may be with as many providers as is necessary to accommodate learners.



- iii. Examination fees.
- iv. Library fees.
- v. Student services fees.
- vi. Any other fees which relate to the provision of education, training and related services.

Arrangements which facilitate learners to complete their studies are preferred where possible.

### 2.3.3 PEL arrangements will be activated when:

- a) A provider fails to provide a programme of education and training of three months' duration or longer where moneys have been paid, for any reason including by reason of insolvency or winding up of that provider, or where QQI withdraws programme validation.
- b) Enrolled learners have begun, but not completed a programme of education and training of three months' duration or longer where moneys have been paid and the provider ceases to provide the programme before that programme is completed for any reason, including by reason of the insolvency or winding up of that provider, or QQI withdraws programme validation.

## 2.4 PROCESS FOR DEMONSTRATING COMPLIANCE WITH PEL REGULATIONS

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2.4.1 Providers must demonstrate their compliance with Part 6 of the 2012 Act by informing QQI in writing of the arrangements in place for PEL and setting out how the provider has satisfied itself that the arrangements are adequate and meet the legal requirements as set out in these regulations. Specifically, the following information and documentation should be supplied in respect of each relevant programme of education and training to which PEL applies:

- a) Details of the arrangements in place for learners to transfer to similar programmes offered by at least two alternate providers.
- b) Confirmation that the alternate providers are separate legal entities and are financially independent from the applicant provider.

- c) Confirmation that the named alternate providers have the capacity to meet their obligations under the PEL arrangement, including a specification of the exact number of learners that can be accommodated on a programme in accordance with the PEL arrangement; or
- d) Where the transfer of learners to alternate programmes is not practicable, a rationale for why this is the case and details of the financial arrangements in place for the refund of moneys to learners, or to those who have paid moneys on their behalf. Financial arrangements must include provision for the distribution of funds to learners and the fund must cover the cost of such a provision.
- e) How the provider has satisfied itself that the PEL arrangements are adequate and meet the legal requirements set out in these regulations.
- f) A stated procedure for alternate providers and QQI to access learner records and assessment material (including assignment briefs and marking criteria etc.) in the event of the provider ceasing to deliver a programme or ceasing trading entirely.

**2.4.2** PEL arrangements must be agreed at the institutional level and should be duly authorised by the appointed representatives of the providers in question.

**2.4.3** Providers must ensure that:

- a) At any given time, the number of enrolled learners on a programme must not exceed the stated maximum number in the PEL arrangement agreed for that programme.
- b) Each time a programme commences, the provider must contact the alternate providers to ensure that the protection arrangements are current and sufficient.

**2.4.4** Providers must notify learners in writing of any change in the arrangements agreed for the protection of enrolled learners as soon as possible after becoming aware of that change.

**2.4.5** Providers must notify alternate providers, learners and QQI, as soon as practicable, when the need to implement a PEL arrangement arises. Named alternate providers must activate their arrangements to accommodate learners in such an event.

**2.4.6** If an alternate provider ceases to offer a programme, or the alternate programme changes materially so that it may no longer be claimed to be similar or it no longer reflects the PEL arrangements made known to learners and QQI, the alternate provider must inform the provider with whom it has a PEL arrangement that the PEL

arrangements are no longer valid. A new arrangement must be secured with a new alternate provider, and learners and QQI must be advised of this within one calendar month. If a new PEL arrangement cannot be secured the provider must immediately cease enrolling new learners on the programme.

2.4.7 QQI will maintain a public record of PEL arrangements of which it has been notified on its national database of programmes and awards.

## 2.5 PROCEDURE FOR ACTIVATING PEL ARRANGEMENTS

2.5.1 PEL arrangements are activated in the event that:

- a) A provider ceases trading while learners are enrolled on programmes.
- b) A provider ceases offering a specific programme while learners are enrolled on the programme.
- c) QQI withdraws validation of the programme while learners are enrolled.

2.5.2 When a situation arises requiring the activation of PEL arrangements (either with alternate providers or a financial arrangement), the provider must immediately inform QQI. This should be followed by formal notification in writing to either the named alternate providers or to the relevant financial institution and to QQI. Arrangements for the draw-down of funds must be communicated to learners and QQI.

2.5.3 The provider, or its duly appointed representative, must devise a '*plan of action for enrolled learners*' to be communicated to learners. Confirmation that this has taken place must be given in writing to QQI. The provider must contact each enrolled learner immediately, informing them of the situation and provide each learner with the plan of action for completion of the programme and/or arrangements involving alternate providers or for the refund of monies paid.

## **2.6 DUTY TO ASSIST QQI IN THE PLACEMENT OF AFFECTED LEARNERS**

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- 2.6.1** QQI is obliged to assist learners to find a programme of education and training which will enable them to complete the education and training commenced with their original provider.
- 2.6.2** Without prejudice to the obligation of a provider to have arrangements in place for PEL, any relevant provider may be asked by QQI to assist in the accommodation of such learners in so far as practicable.

### **3 REVIEW OF THESE REGULATIONS**

The regulations for compliance with PEL will be reviewed two years after the date of adoption by the Board of QI or earlier if necessary.

## PEL REGULATIONS: Glossary of Terms

### *A similar programme:*

One that leads to the same award type in the same field of learning at the same NFQ level, and with broadly similar learning outcomes. A programme which meets these requirements may be deemed as similar regardless of differences in mode, duration or place of delivery.

### *Award Type:*

A class of named awards sharing common features and NFQ levels. At each level in the Framework there is at least one award-type. Each award-type has its own award-type descriptor.

### *Enrolled learner:*

A learner who has enrolled in a programme of education and training.

### *Moneys most recently paid:*

For programmes of up to one year in duration, a provider must have adequate arrangements in place to meet a claim for refund in respect of the full duration of such programmes. In respect of programmes the duration of which is greater than the equivalent of one year, and where fees and other payments are required to be made by the learner for each year, a provider must have adequate arrangements in place to meet a minimum of one year's provision of claim for refund available at all times. In summary, learners are entitled to the refund of up to one year of moneys paid.

### *Programme of education and training:*

A process by which a learner acquires knowledge, skill or competence and includes a course of study, a course of instruction and an apprenticeship.

### *Provider:*

A person who provides, organises or procures a programme of education and training.

Recognised school:

Means a school that is recognised by the Minister under section 10 of the Education Act 1998.

Relevant programme:

A programme to which interim QQI PEL policy and related procedures applies i.e. a programme of three months or longer duration where monies have been paid by, or on behalf of, the learner.

Relevant provider:

Is one of the following:

- a) A previously established university.
- b) An educational institution established as a university under section 9 of the Act of 1997.
- c) The Royal College of Surgeons in Ireland.
- d) The Dublin Institute of Technology.
- e) A provider whose programme of education and training is validated under Section 45 of the 2012 Act.
- f) A provider who has entered into an arrangement with an awarding body under Section 48 of the 2012 Act.
- g) A provider to whom authority to make an award has been delegated under Section 53 of the Act.
- h) A provider who is authorised to use the international education mark under Section 61 of the Act other than a provider who is so authorised where that provider is also:
  - i. A provider referred to in paragraphs (a) to (g), or
  - ii. A linked provider.

Three months duration:

Three calendar months, regardless of mode or nature of delivery or volume of learning. When determining whether a programme meets this criterion, the period from the commencement of instruction to the point when learners have been assessed for the purposes of completing the programme should be considered.

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