

# QQI SUBMISSION ON PROPOSALS TO UPDATE THE HIGHER EDUCATION AUTHORITY LEGISLATION

30 SEPTEMBER 2019



**QQI**

Quality and Qualifications Ireland  
Dearbhú Cáilíochta agus Cáilíochtaí Éireann

*Adding Value to Qualifications*



## Legislative Proposals for the Reform of the Higher Education Authority Act 1971

The Department of Education and Skills published legislative proposals on the Higher Education Authority Act, 1971 in July 2019. Public consultation is open until 30 September.

The main objective is to update the 1971 legislation and provide a legal basis for the HEA's functions in relation to the performance and regulation of higher education institutions which have evolved since 1971.<sup>1</sup> It is proposed that the HEA becomes the Higher Education Commission (HEC).

### Issues for QQI

The key points made in QQI's submission to the first consultation on updating the HEA legislation, made when the Quality and Qualifications (Amendment) 2018 Bill was under debate, were that the HEA legislation needs to:

- clearly demarcate the lines of accountability between higher education institutions, QQI, the HEA and the Department of Education and Skills (DES)
- enable collaboration and data-sharing between QQI and the HEA
- take account of the new functions of QQI under the amended legislation.

The outline proposals take these points into account.

Some of the proposed functions of the HEC will rely on the work of QQI on quality assurance, corporate fitness and the National Framework of Qualifications (which has broader ownership than QQI). It will be important that the independence of QQI in regulating these areas is respected in the legislation and in practice.

The legislative proposals rely on definitions of 'higher education awards' and 'higher education providers' and 'higher education institutions'. These terms, whilst used in legislation, funding and practice are interpreted differently by different public bodies, e.g. approval of 'higher education' courses and institutions for tax relief. Specified institutions may be exempted from regulation. This may impact the intended scope of HEC regulation.

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<sup>1</sup> Department of Education and Skills (2019) Consultation report and response of the Department of Education and Skills, Legislative Reform, Higher Education Authority Act 1971, p22  
Paris Communiqué Appendix III



The main issues for QQI concern

- 1) **The proposed model for designating higher education institutions**
- 2) **Possible requirements that funding be tied to compliance with QQI requirements in relation to quality assurance, corporate fitness, the International Education Mark (IEM) and the Learner Protection Fund.**
- 3) **Co-operation with QQI**
- 4) **The integration of the further education and training sector with the higher education and training sector**
- 5) **HEC policy advice and data-collection**
- 6) **HEC role in relation to research**
- 7) **Size of the HEC Board**

Some of the issues relate to policy. Others are technical and/or await the implementation of new legislation and best be addressed in detailed working arrangements between the HEC and QQI.

## The Proposed Model for Designating Higher Education Institutions

### QQI understanding of the proposed legislation

The registration model, proposed in July 2018, has been dropped. Instead, the existing **designation model** will be built upon. The purpose of designation is *'to ensure that there is some minimal regulation of all higher education providers, even those not in receipt of Exchequer funding in order to protect students, uphold standards, maintain international reputation and to protect the sustainability of the HEIs and the higher education system'* (Consultation report, p.32). Currently, the designated institutions are universities, colleges of a university, technological universities, institutes of technology, RCSI, NCAD, and the Royal Irish Academy. It is proposed that designated institutions will automatically include HEIs that are currently designated.

Designated status will not create an entitlement to public funding. Nor is HEC funding to be restricted to designated institutions – other higher education providers may be funded by the HEC.



It is proposed that a designated institution is a higher education provider which:

*'provides programmes leading to at least one higher education and training award that is included within the NFQ, and which was established and is operated for the principal purposes of higher education. The HEC will determine which higher education providers are institutions of higher education for the purposes of the Act. The Minister may make regulations specifying the criteria for such a determination'.*

## QQI response

It is not clear whether the aim of ensuring 'minimal regulation of higher education providers' assumes that QQI regulates all such providers. QQI's regulatory role, in general, extends to providers who seek to access QQI awards or NFQ awards. QQI's quality assurance role extends to all public higher education institutions (Institutes of Technology, universities, technological institutes, RSCI and NUI and linked providers; and some 30 private or independent providers that offer higher education leading to QQI awards). Private or independent providers will be obliged, under the 2019 Amendment Act, to demonstrate to QQI that they meet corporate fitness requirements.

QQI notes that the proposed definitions of 'higher education providers' and of 'higher education awards' are not clear enough to determine designation.

Some higher education providers whose programmes lead to the Higher Certificate (NFQ Level 6) or awards at Levels 7-9 are not necessarily higher education institutions e.g. Institute of Integrative Counselling and Psychotherapy Education and Training Limited, Clanwilliam Institute. Likewise, Educations and Training Boards may, if they meet the relevant validation requirements, offer programmes leading to the Higher Certificate. Similarly, 'linked providers' of universities, Institutes of Technology, the RCSI, the NUI and Technological Universities may not be typical higher education institutions e.g. the Institute of Public Administration (linked provider of the NUI).

At present (2019), all qualifications included in the NFQ at levels 7 – 10 are deemed to be higher education and training awards.<sup>2</sup> Vocationally oriented qualifications are encompassed in this definition.

Both further and higher education and training awards are included in Level 6 of the NFQ but QQI has no legal basis (or legal requirement) to differentiate between them.<sup>3</sup> QQI is undertaking a review of Level 6 major awards (Higher Certificate and Advanced Certificate) – the outcomes of the review may inform policy

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<sup>2</sup> Verification of Compatibility of Irish National Framework of Qualifications with the Framework for Qualifications of the European Higher Education Area  
<https://www.qqi.ie/Publications/Publications/Verification%20of%20Compatibility%20of%20NFQ%20with%20QF%20EHEA%20220609.pdf>

<sup>3</sup> The distinction between these was based on the need to determine which awarding body (FETAC or HETAC) would make what awards at Level 6. The need for this was removed in the 2012 Quality and Qualifications 2012 Act which merged those awarding bodies to form QQI.



and/or funding. It is also likely that the interpretation of short-cycle qualifications<sup>4</sup>, such as the Higher Certificate, will arise in the context of the re-referencing the NFQ against the European Framework of Qualifications (which QQI will commence later in 2019). This will provide an opportunity for the awarding bodies, HEA, SOLAS and the Department of Education and Skills to address the issue.

### Considerations in defining a higher education award

QQI considers that it is critical that any (new) definition of a higher education award be consistent with the NFQ and with the understandings in the Bologna Framework (the Qualifications Framework for the European Higher Education Area) and the European Framework of Qualifications (EQF). Consistency with ISCED ((the International Standard Classification of Education) classifications is also desirable. The current relationships between these are outlined in the table below.

#### *Relationships between NFQ, EQF, QF-EHEA and ISCED levels*

Ireland's NFQ	EQF	QF-EHEA	ISCED
10 – Doctoral Degree	8	Doctoral (Third Cycle)	8 (Doctoral or Equivalent)
9- Masters and Post Graduate Diploma	7	Masters (Second Cycle)	7 (Masters or Equivalent)
8- Honours Bachelor Degree and Higher Diploma	6	Bachelor (First Cycle)	6 (Bachelors or Equivalent)
7- Ordinary Bachelor Degree	6	Bachelor (first Cycle)	6 (Bachelors or Equivalent)
6- Higher Certificate	5	Short-Cycle	5 (Short Cycle Tertiary)

The Bologna Framework established four cycles of higher education - Short-Cycle, Bachelor, Masters and Doctoral. Broad descriptors for awards/qualifications associated with each cycle include learning outcomes, credit ranges and progression (see Annex 1 attached). Short cycle qualifications received political

<sup>4</sup> Short cycle refers to qualifications within the first cycle of the Framework of Qualifications for the European Higher Education Area (Bologna Framework) – See Annex 1 Paris Communiqué Appendix III



endorsement at the Bologna Ministerial meeting in Paris 2018, but they vary in their presence and significance across Europe. The Higher Certificate in Ireland is an example of a short-cycle higher education qualification.

ISCED is based on a definition of tertiary education that includes academic higher education and also advanced professional and technical education.<sup>5</sup>

Reliance on the Bologna Framework alone in defining a higher education award would exclude the Advanced Certificate, professional, sectoral and international awards at higher levels of the NFQ. The 2019 Amendment Act provides for such awards to be included in the NFQ through a process of listing awarding bodies e.g. City and Guilds who seek to access the NFQ.

Reliance on the Bologna Framework alone could exclude some higher level qualifications associated with apprenticeships, when government policy is for apprenticeships to lead to awards from NFQ levels 5-9.

## Possible Requirements that Funding be tied to QQI Regulatory Requirements

**Section 45** (grants by HEC) of the legislative proposals states that the conditions of funding to be developed by the HEC may include:

- Quality assurance requirements
- Access to the International Education Mark (IEM)
- Membership of the Learner Protection Fund (for those bodies not excluded from membership)
- Requirements to provide requested information including accurate robust financial information

### QQI response

QQI considers that it is desirable that, insofar as is practicable, the funding of education and training programmes be subject to those programmes leading to awards that are included in the NFQ.

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<sup>5</sup> 'Tertiary education builds on secondary education, providing learning activities in specialised fields of study. It aims at learning at a high level of complexity and specialisation. Tertiary education includes what is commonly understood as academic education but also includes advanced vocational or professional education. There is usually a clear hierarchy between qualifications granted by tertiary education programmes. It comprises ISCED levels 5 (short-cycle tertiary education), 6 (Bachelor's or equivalent level), 7 (master's or equivalent level) and 8 (doctoral or equivalent level). The content of programmes at the tertiary level is more complex and advanced than in lower ISCED levels.'

([https://www.oecd-ilibrary.org/education/isced-2011-operational-manual\\_9789264228368-en](https://www.oecd-ilibrary.org/education/isced-2011-operational-manual_9789264228368-en) p.69)



The 2019 Amendment Act requires providers (in general, private providers) to demonstrate their corporate fitness, including their *bona fides*, financial status and capacity to engage with QQI quality assurance processes in the broadest sense (where they seek QI or NFQ awards).<sup>6</sup> Compliance with corporate fitness is a criterion for access to the International Education Mark and membership of the Learner Protection Fund. The corporate fitness regime has yet to be put in place (following commencement of legislation, Ministerial regulations and establishment of policy and procedures). QQI supports efforts to avoid unnecessary duplication of regulatory requirements on providers and considers that its decisions on corporate fitness should be sufficient to meet the HEC needs.

For reliance on compliance with QQI requirements to be fully effective, the HEC legislation should also provide a basis for QQI to inform the HEC of relevant decisions and findings of QQI's work e.g. approval of corporate fitness, quality assurance arrangements, programme validations and inclusion of awards in the NFQ. The details of this could be worked out through the QQI/HEA Memorandum of Understanding.

## Co-operation with QQI

**Section 15** provides for cooperation with QQI. This is welcome. It may also be useful to expand this section or others (**sections 36 and 45**) to provide for QQI to notify the HEC of relevant decisions and findings relating to quality assurance, the inclusion of awards in the NFQ and other regulatory activity. These changes would reciprocate the provision in **Section 50** whereby the HEC notifies QQI of any issues relating to QQI legislation that arise in reviews that it carries out.

**Section 36** provides that the HEC be advised by an institution of higher education of a change in circumstances where it a) no longer provides programmes leading to at least one award in the NFQ or where there is a significant material change that could reasonably be said to affect the ability of an institution to meet the criteria for determining that it was established and is operated for the principal purposes of higher education (p.19). QQI suggests that, in line with **Section 45** (see above) provision to be made for QQI to notify the HEC of relevant changes of circumstance.

QQI also welcomes **Section 64** on sharing information with public bodies in accordance with the Data Sharing and Governance Act, 2019

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<sup>6</sup> Section 29B (1). Providers who are exempted from this requirement are listed in Section 65(6), 2019 Amendment Act  
Paris Communiqué Appendix III



## The integration of the further education and training sector with the higher education and training sector

### QQI response

QQI welcomes Section 16 on cooperation between SOLAS and the HEC specifically on the 'integration of the further education and training sector with the higher education sector' and 'an integrated approach to transfer and progression pathways from the further education and training sector to the higher education sector'. QQI suggests that the legislation enables the HEC and/or SOLAS to fund collaboration across the sectors

between providers of further and of higher education and training and between networks and fora, such as the National Teaching and Learning Forum. QQI's Memoranda of Understanding with SOLAS and the HEA facilitates our cooperation and work across the post-secondary system.

## HEC policy advice and data-collection

### QQI response

QQI suggests that consideration be given to extending the scope of HEC policy advice to explicitly include private providers, given their current contribution and their anticipated role in meeting future demand for higher education and training. This could also include provision to collect data directly from private higher education institutions, both those which are designated and non-designated. This would allow the HEC to act as a comprehensive national data repository (along the lines of the in the UK [Higher Education Statistics Agency](#)).

## HEC role in relation to research

### QQI response

The legislative proposals envisage a significant role for the HEC in relation to higher education research (strategy, policy and advice). QQI has a complementary role in relation to the external quality assurance of research. This should be included in cooperation between the HEC and QQI so as to clarify their respective roles and relationships with higher education institution



## Size of the HEC Board

### QQI response

QQI notes the proposal that the HEC Board comprise no more than nine members, with a gender balance, and at least two from outside Ireland and some to be appointed by Ministers. QQI considers that, given the scope of the Board's work including that of committees, a larger membership is required.



QQI

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EMPOWERING  
EHEA Paris 2018  
EUROPE'S YOUTH

Conférence ministérielle européenne  
pour l'enseignement supérieur



EUROPEAN  
Higher Education Area

## THE FRAMEWORK OF QUALIFICATIONS FOR THE EUROPEAN HIGHER EDUCATION AREA

The Paris Conference of European Ministers Responsible for Higher Education 24-25 May 2018 adopted the revised overarching framework for qualifications in the EHEA, implementing the commitment in the Yerevan Communiqué. The revised overarching framework for qualifications in the EHEA comprises the short cycle, the first cycle, the second cycle and the third cycle generic descriptors for each cycle based on learning outcomes and competences, and credit ranges in the short cycle, first and second cycles. Ministers committed themselves to elaborating national frameworks for qualifications compatible with the overarching framework for qualifications in the EHEA. While recognising that each country decides whether and how to incorporate short cycle qualifications within its own national framework, the Paris Communiqué underlined the role ECTS-based short cycle qualifications play in preparing students for employment and further studies as well as in improving social cohesion.



Qualifications Framework for the European Higher Education Area (QF-EHEA)		
	Learning outcomes	ECTS credits
Short cycle qualifications	<p>Qualifications that signify completion of the higher education short cycle are awarded to students who:</p> <ul style="list-style-type: none"><li>- have demonstrated knowledge and understanding in a field of study that builds upon general secondary education and is typically at a level supported by advanced textbooks; such knowledge provides an underpinning for a field of work or vocation, personal development, and further studies to complete the first cycle;</li><li>- can apply their knowledge and understanding in occupational contexts;</li><li>- have the ability to identify and use data to formulate responses to well-defined concrete and abstract problems;</li><li>- can communicate about their understanding, skills and activities, with peers, supervisors and clients;</li><li>- have the learning skills to undertake further studies with some autonomy.</li></ul>	Typically include 90-120 ECTS credits
First cycle qualification	<p>Qualifications that signify completion of the first cycle are awarded to students who:</p> <p>have demonstrated knowledge and understanding in a field of study that builds upon their general secondary education, and is typically at a level that, whilst supported by advanced textbooks, includes some aspects that will be informed by knowledge of the forefront of their field of study;</p> <p>can apply their knowledge and understanding in a manner that indicates a professional approach to their work or vocation, and have competences typically demonstrated through devising and sustaining arguments and solving problems within their field of study;</p>	Typically include 180-240 ECTS credits



	<p>have the ability to gather and interpret relevant data (usually within their field of study) to inform judgments that include reflection on relevant social, scientific or ethical issues;</p> <p>can communicate information, ideas, problems and solutions to both specialist and non-specialist audiences;</p> <p>have developed those learning skills that are necessary for them to continue to undertake further study with a high degree of autonomy.</p>	
<p>Second cycle qualification</p>	<p>Qualifications that signify completion of the second cycle are awarded to students who:</p> <p>have demonstrated knowledge and understanding that is founded upon and extends and/or enhances that typically associated with the first cycle, and that provides a basis or opportunity for originality in developing and/or applying ideas, often within a research context;</p> <p>can apply their knowledge and understanding, and problem solving abilities in new or unfamiliar environments within broader (or multidisciplinary) contexts related to their field of study;</p> <p>have the ability to integrate knowledge and handle complexity, and formulate judgments with incomplete or limited information, but that include reflecting on social and ethical responsibilities linked to the application of their knowledge and judgments;</p> <p>can communicate their conclusions, and the knowledge and rationale underpinning these, to specialist and non-specialist audiences clearly and unambiguously;</p> <p>have the learning skills to allow them to continue to study in a manner that may be largely self-directed or autonomous.</p>	<p>Typically include 90-120 ECTS credits, with a minimum of 60 credits at the level of the 2nd cycle</p>
<p>Third cycle qualification</p>	<p>Qualifications that signify completion of the third cycle are awarded to students who:</p> <p>have demonstrated a systematic understanding of a field of study and mastery of the skills and methods of research associated with that field;</p> <p>have demonstrated the ability to conceive, design, implement and adapt a substantial process of research with scholarly integrity;</p> <p>have made a contribution through original research that extends the frontier of knowledge by developing a substantial body of work, some of which merits national or international refereed publication;</p> <p>are capable of critical analysis, evaluation and synthesis of new and complex ideas;</p> <p>can communicate with their peers, the larger scholarly community and with society in general about their areas of expertise;</p> <p>can be expected to be able to promote, within academic and professional contexts, technological, social or cultural advancement in a knowledge based society.</p>	<p>Not specified</p>