



QQI

Quality and Qualifications Ireland  
Dearbhú Cáilíochta agus Cáilíochtaí Éireann

## SECTION 4.11

# Green Paper on Provider Risk and Proportionality

FOR CONSULTATION

QQI welcomes your views.

If you have suggestions regarding any aspect of the content of this proposed Policy Document please use the *Questions and Comments* area which appears immediately after it.

PLEASE NOTE:

**13 SEPTEMBER 2013**

CLOSING DATE FOR SUBMISSIONS

**SECTION 4.11**

## **Green Paper on Provider Risk and Proportionality**

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### **4.11.1 Introduction**

This section introduces the notion of risk and proportionality and explores how these concepts might inform the business of QQI as a quality assurance agency and awarding body in its interaction with both new and existing providers. In doing so, it is important to note that QQI is not interpreting risk as a necessarily negative concept and understands that risks can be coupled with opportunities.

In looking at risk and proportionality, this paper introduces the possibility, and associated advantages and disadvantages of establishing a transparent, comprehensive and principles-based structure for assessing, managing and communicating the various categories of risk associated with providers. Such an approach is situated on a spectrum of possible operating methodologies for QQI ranging from entirely risk-based, and therefore “bespoke”, interaction with providers, to a more uniform approach uninformed by risk, which is based on concepts of equality. In-between are hybrids of the two approaches, which to greater or lesser degrees informally utilise local knowledge of risk to inform decision-making.

### **4.11.2 Risk and Proportionality-based Approaches**

A risk and proportionality-based approach to organisational activity and governance is increasingly considered good practice both nationally and internationally. Risk may be defined as “the threat that an event, action or failure to act will affect an organisation’s ability to achieve its objectives and to successfully execute its strategies”,<sup>1</sup> while a risk management policy would set out how the organisation will ensure that the culture, processes and structures are directed towards the effective management of potential risks and opportunities. Risk management (if adopted as an approach) will be aligned with the mission, vision, strategic objectives and priorities of QQI and will be embedded as part of the planning and management systems.<sup>2</sup> The OECD suggests that the use of deliberate risk-based approaches to regulation can result in more efficient government services and better

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<sup>1</sup> Horan, A. (206) *Risk Management as part of Good Governance*. P.1 Available at: [www.governance.ie/attachments/Risk\\_managementAHoran.doc](http://www.governance.ie/attachments/Risk_managementAHoran.doc)

<sup>2</sup> *Ibid.* p. 2

protection for citizens from hazards.<sup>3</sup> Other benefits arising for governments and their agencies being able to correctly identify and respond to risks include more targeted use of public resources; reduced cost of delivering a wider range of services and higher rates of regulatory compliance.<sup>4</sup>

Another input to our thinking in terms of the options identified in this Green Paper is the review of Irish regulatory infrastructure over certain human services practice undertaken by the National Economic and Social Council, which advises that in relation to regulated organisations:

*“...regulators do not directly intervene but primarily encourage organisations to install systems of monitoring and self-regulation. Regulators and overseers seek to assure themselves that these systems are adequate and being followed, i.e. it is the regulation of self-regulation. In the aftermath of many regulatory failures, governments have encouraged organisations to adopt advanced systems of managing risk and require regulators to assess how well these systems are operating, rather than directly inspecting for risk themselves. The regulator specifies the goals that are to be achieved and leaves it to those operating at the frontline to work out how best this can be done. It is less about the regulator checking compliance with rules and more about encouraging organisations under its charge to put in place their own mechanisms of internal control and monitoring. This is not to say that the regulator has a passive role since it involves challenging organisations to prove that they have appropriate systems in place, thus provoking a continuous cycle of self-reflection about performance.”<sup>5</sup>*

Internationally, risk-based models of regulation are becoming more commonplace. The following examples are drawn from bodies involved in the regulation of education and training:

#### Scotland

SQA Accreditation (Scotland) has a quality enhancement model in place for rating approved awarding bodies which determines the level of full audit activity to be carried out within a three year cycle. SQA Accreditation reserves the right to amend the audit schedule at any point should reason dictate in the light of any regulatory issues identified throughout the

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<sup>3</sup> OECD (2010) *Risk and Regulatory Policy Improving the Governance of Risk*. (p. 11)

<sup>4</sup> *Ibid.* p 18

<sup>5</sup> National Economic and Social Council (2012): *Achieving Quality in Ireland's Human Services - A Synthesis Report* National Economic and Social Development Office (p 10)

year. It assigns a risk rating to each non-compliance recorded as a result of an awarding body audit or through centre monitoring activity. The assignment of a risk rating allows an awarding body to target their resources to areas that have been identified as having a major impact. The risk rating also allows SQA Accreditation to target its resources to support awarding bodies in improving their performance.<sup>6</sup>

#### England, Wales and Northern Ireland

Ofqual, the regulatory body for vocational qualifications in England, Wales and Northern Ireland also operates a risk-based regulatory model.<sup>7</sup> Here too, awarding bodies under Ofqual's remit are required to identify the risks, take preventative steps and contingency plan. The intensity and nature of Ofqual's interaction with its awarding bodies is proportionate to the risk associated with the awarding body in question.

#### Australia

Australia has produced a number of risk-based models for regulating education and training across the states and federally, and across the different education and training sectors.<sup>8</sup> For example, the Tertiary Education Quality and Standards Agency (TEQSA) is required by legislation to reflect risk in performing its regulatory functions. The TEQSA Regulatory Risk Framework (RRF) sets out TEQSA's policy and processes for identifying and assessing risk to quality higher education delivery in relation to the threshold standards.<sup>9</sup> By applying a risk-based approach, TEQSA may adjust the frequency and intensity of regulatory review and quality assurance activities based on its risk assessment of a higher education provider. As such, the RRF is a tool to support internal decision-making by TEQSA.

### **4.11.3 Rationale**

Under the 2012 Act, QQI has a QA relationship with a large and diverse range of providers, from universities to small private providers in the FET, HET and ELT sectors. The number of providers QQI will interact with is likely to increase as a result of new legislative functions, such as the International Education Mark (IEM). In this context, increasing the resource

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<sup>6</sup> See, for example: [http://www.sqa.org.uk/sqa/files\\_ccc/RADCMVReport2012.pdf](http://www.sqa.org.uk/sqa/files_ccc/RADCMVReport2012.pdf)

<sup>7</sup> Please see: <http://www.ofqual.gov.uk/how-we-regulate/>

<sup>8</sup> Please see, for example, the Australian Skills Quality Authority (ASQA) and its Risk Assessment Framework: [http://www.asqa.gov.au/verve/\\_resources/Risk\\_assesment\\_framework.pdf](http://www.asqa.gov.au/verve/_resources/Risk_assesment_framework.pdf); The Tertiary Education Quality and Standards Agency (TEQSA)'s Regulatory Risk Framework, which sets out TEQSA's policy and processes for identifying and assessing risk in the higher education sector

<sup>9</sup> Please: <http://www.teqsa.gov.au/regulatory-approach/regulatory-risk-framework>

efficiency of both QQI and providers is important. In respect of QQI's Lifecycle of Provider Engagements, there is a need to strike a balance between supporting innovation and diversity amongst providers and acting to assure quality and standards in a way that inspires public confidence.

QQI is also seeking to be innovative and responsive (rather than reactive) in the way in which it approaches its responsibilities and functions. Regulation is required under legislation, but the manner in which it is carried out is open to discussion (within the confines of the legislative requirements). It is acknowledged that some providers have greater autonomy and are subject to different degrees and types of regulatory oversight by QQI. The possibility exists for providers to influence regulatory impact by demonstrating accountability, and therefore for regulatory activity to be proportionate.

Although risk, as such, does not feature in the 2012 Act, it has the potential to serve as an organising analytic tool across many of the statutory functions and the complex relations QQI has with providers. While none of the legacy organisations had formal policies in this area, perceptions of risk frequently informed decision-making, and procedures did exist for dealing with emergency situations such as providers suddenly and unexpectedly closing. It is recognised through the experiences of the FET and HET Awards Councils, NQAI and the IUQB, that circumstances can arise for providers that can have a significant impact on their operations and, on occasion adversely impact learners, national awards, other providers and other stakeholders and potentially damage the reputation not just of an individual provider, but also of education and training in the State.

#### **4.11.4 Options**

Available options sit on a spectrum ranging from entirely risk-based and therefore "bespoke" interaction with providers to a one-size-fits-all approach whereby providers are not risk assessed in any way and one model for QA and related policies and procedures is applied to all providers, regardless of their individual circumstances. In-between is a working methodology which incorporates an informal notion of risk (often based on local knowledge) that is not made explicit, and which may direct regulatory activity, though not in a transparent or necessarily consistent way.

#### **OPTION 1 Formal Risk (evidence-based) Approach to Regulation**

QQI assesses the risk associated with providers with whom it has a direct relationship, and the impact and likelihood of such risks occurring. The risk associated with each and every relevant provider is determined on the basis of the provider's own self-evaluation, cross-referenced against any relevant data and criteria QQI itself holds, and on that basis, a risk profile for that provider is assigned. This risk-profile will underpin the spectrum of engagement between QQI and a provider and will commence with the initial quality assurance agreement between QQI and a provider. It will impact upon other activities, including programme accreditation, delegation of authority to make awards, monitoring, quality review, protection for enrolled learners and the International Education Mark. A risk-based or evidence-based model is one means of ensuring that QQI's interaction with individual providers is appropriate, proportionate and reflective of individual provider circumstances.

Questions that need to be explored in relation to this option include whether or not:

- a provider's risk profile is made public and the implications of this
- how this approach to regulation could be reflected in the relationship between designated awarding bodies and linked providers

#### Advantages

- Evidence-based interaction is proportionate interaction, and can result in equitable, rather than equal, treatment of providers; i.e. a risk-based approach could lead to proportionate intervention on the part of QQI rather than treating all providers in the same way. In this way, sufficient resources can be allocated to address known risks, while over-regulation or disproportionate intervention is prevented in low-risk situations, thus minimising the impact on both QQI and provider resources. This in turn should reduce the compliance burden on providers with a demonstrated low risk profile.
- This approach recognises that providers are in the best position to recognise their own business needs and the risks inherent to same, and therefore to develop systems and procedures that are fit-for-purpose to identify and address those risks. Provider self-assessment and evaluation of their own risk is a means to supporting continuous improvement of provider operations. Benefits and incentives to providers may result in terms of improving internal governance in order to reduce risks.
- The outcomes of formal interactions with QQI do not remain isolated, but inform other processes in which the provider is involved i.e. this approach contributes to the Provider Engagements Lifecycle.

### Disadvantages

- There may be an unrealistic expectation around what a policy and associated procedures for provider risk and proportionality can achieve. There is no policy or procedure that can remove risk entirely. Rather risk can be assessed and the outcome of that assessment can be used as a tool in the quality assurance relationship with the provider in question.
- “A significant constraint on undertaking risk assessment and analysis is the availability of reliable and comprehensive data (OECD. P 21). This data can be costly and time-consuming to collect.
- Risk-related regulatory concepts have been subject to specific criticisms which make clear that they should be used with care, critical reflection, and an awareness of the complexities involved.
- QQI and providers may underestimate the complexities involved in the development of provider risk profiles, including the time required to understand and develop an appropriate framework, including the identification of appropriate risk categories.

### **OPTION 2 Uniform Approach to Regulation**

QQI does not adopt a risk-based approach to implementing its regulatory functions. QQI either adopts one model for QA and related policies and procedures and applies this uniformly to all providers, regardless of their individual circumstances or it adopts a small number of sectoral models for quality assurance and applies these uniformly to providers based on the education and training sector to which they (predominantly) belong, regardless of the individual circumstances or track record or other evidence relating to a given provider. Essentially, this is a “one-size-fits-all” approach (either for all of education and training, or for all providers within one sector of education and training), whereby providers are not risk assessed in any way.

### Advantages

- This option affords for (superficially at least) equal treatment of all providers under QQI policy and procedures.
- This option is easy to communicate and easy(ier) to understand by providers and other interested parties.
- Because one model is being used, it should result in data that is comparable across providers, which could facilitate the identification of emerging trends and issues etc.

### Disadvantages

- Under this option, QQI interaction with providers is all the same level of intensity: this may be too much for some and too little for others.
- This option does not take account of the fact that not all providers operate at the same level or in the same way; individual circumstances differ widely and are subject to change.
- If you have uniformity of approach, it is difficult to link the outcomes of individual process in which a provider is involved e.g. validation or programmatic review are processes which operate in isolation. The results from monitoring may not inform a programmatic review and a poor programmatic review may not feed into an overall quality review. In this way, the provider is not looked at through the totality of their engagement with QQI, but rather through the lens of an individual process.

### **OPTION 3 Uniform Approach to Regulation, with Proportionality Derived from Informal Risk Assessment.**

As with Option 2, QQI adopts a “one-size-fits-all” approach to interaction with providers, which is not formally informed by risk assessment of providers. However, the working methodology incorporates an informal notion of risk (often based on local knowledge) that is not made explicit, and which may direct regulatory activity, though not in a transparent or consistent way. In reality, this is what happened to some extent in the FET and HET Awards Councils previously.

### Advantages

- Superficially, option three carries the same advantages as option 2 because the notion that risk is being used as a methodology is not being made explicit; in some ways the informal use of risk in this way may counteract the disadvantage associated with option 2, that the individual circumstances of different providers are not accounted for in their engagement with QQI.

### Disadvantages

- Decisions based on local knowledge may often be sound; however there are inherent problems with this approach: This knowledge is frequently not formally logged or captured anywhere, but resides with an individual managers or key staff; as such it is lost if individual staff are not present and cannot inform the decision-making



processes of staff in other areas, or can only do so in an ad-hoc rather than in a transparent and consistent way. Furthermore, in the absence of explicit criteria for identifying and assessing risk, informal notions of risk used by individual staff may result in the inequitable treatment of some providers.

- Again with this option, it is difficult to link the outcomes of individual process in which a provider is involved e.g. validation or programmatic review are processes which operate in isolation. The results from monitoring may not inform a programmatic review and a poor programmatic review may not feed into an overall quality review. In this way, the provider is not looked at through the totality of their engagement with QQI, but rather through the lens of an individual process.

# Questions and Comments

## SPECIFIC CONSULTATION QUESTIONS

**Q4.11.A** Are there other approaches to regulation that have not been considered in this Green Paper?

**Q4.11.B** Are there advantages and disadvantages that have not been identified for each approach?

**Q4.11.c** Do you have any preferences among the approaches?

option 1

option 2

option 3

**Q4.11.D** Do you have any comments on the issues raised in the Green Paper?

- » You can choose to save this document and return to add further comments.
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Thank you for your time!