



---

*Number 32 of 2019*

---

**Qualifications and Quality Assurance (Education and Training) (Amendment)  
Act 2019**

---





---

*Number 32 of 2019*

---

**QUALIFICATIONS AND QUALITY ASSURANCE (EDUCATION AND TRAINING)  
(AMENDMENT) ACT 2019**

---

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement
2. Definition

PART 2

AMENDMENT OF PRINCIPAL ACT

3. Amendment of section 2 of Principal Act (Interpretation)
4. Amendment of section 9 of Principal Act (Functions of Authority)
5. Amendment of section 13 of Principal Act (Co-operation with Authority)
6. Amendment of Principal Act – furnishing of information to other bodies
7. Amendment of section 27 of Principal Act (Quality assurance)
8. Amendment of section 28 of Principal Act (Obligation of providers to prepare quality assurance procedures)
9. Condition precedent for provisions of Principal Act to be invoked by specified providers – criteria specified in regulations must be met
10. Amendment of section 30 of Principal Act (Quality assurance procedures and relevant providers, other than previously established universities)
11. Amendment of section 34 of Principal Act (Review by Authority of quality assurance procedures of relevant providers)
12. Amendment of section 36 of Principal Act (Withdrawal by Authority of approval of quality assurance procedures)
13. Amendment of section 42 of Principal Act (Quality reviews by Authority)
14. Amendment of section 43 of Principal Act (Framework of qualifications)
15. New section 43A of Principal Act – offence to provide or advertise cheating services
16. Amendment of section 44 of Principal Act (Application for validation of programme of education and training)
17. Amendment of section 45 of Principal Act (Determination of application for validation of programme of education and training)

18. Amendment of section 47 of Principal Act (Withdrawal of programme validation)
19. Amendment of section 48 of Principal Act (Arrangement between providers and awarding bodies other than the Authority)
20. Amendment of section 50 of Principal Act (Making of an award)
21. Amendment of section 52 of Principal Act (Request by provider for delegation of authority to make award)
22. Amendment of section 53 of Principal Act (Determination of request for delegation of authority to make award)
23. New sections 55A to 55I of Principal Act – awards included within Framework (process by which awards acquire such status)
24. Amendment of section 57 of Principal Act (Review by Authority of implementation of procedures for access, transfer and progression)
25. Amendment of section 60 of Principal Act (Code of Practice for provision of programme to international learners)
26. Amendment of section 61 of Principal Act (International education mark)
27. 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)
28. Amendment of section 64 of Principal Act (Interpretation)
29. Amendment of section 65 of Principal Act (Arrangements by providers for protection of enrolled learners)
30. New section 66 of Principal Act (Protection of Enrolled Learners Fund)
31. Payment of annual charges into Learner Protection Fund and related matters
32. Amendment of section 67 of Principal Act (Obligation on providers to furnish information to enrolled learners)
33. Amendment of section 79 of Principal Act (Database)
34. Amendment of section 80 of Principal Act (Fees)
35. Amendment of section 84 of Principal Act (Transitional and savings provision for the Qualifications (Education and Training) Act 1999)

### PART 3

#### MISCELLANEOUS

36. Amendment of Regional Technical Colleges Act 1992
37. Authorisation to use description: “university”
38. Construction of references in other enactments to awards recognised within Framework

## ACTS REFERRED TO

Central Bank Act 1971 (No. 24)  
Companies Act 2014 (No. 38)  
Data Protection Act 2018 (No. 7)  
Education (Miscellaneous Provisions) Act 2015 (No. 11)  
Education Act 1998 (No. 51)  
Further Education and Training Act 2013 (No. 25)  
Higher Education Authority Act 1971 (No. 22)  
Institutes of Technology Act 2006 (No. 25)  
Qualifications (Education and Training) Act 1999 (No. 26)  
Qualifications and Quality Assurance (Education and Training) Act 2012 (No. 28)  
Regional Technical Colleges Act 1992 (No. 16)  
Technological Universities Act 2018 (No. 3)  
Universities Act 1997 (No. 24)





---

*Number 32 of 2019*

---

**QUALIFICATIONS AND QUALITY ASSURANCE (EDUCATION AND TRAINING)  
(AMENDMENT) ACT 2019**

---

An Act to amend and extend the Qualifications and Quality Assurance (Education and Training) Act 2012; for that purpose to make fresh provision concerning the means by which an award's status, with reference to the National Framework of Qualifications, may be established and, to that end, to provide for the establishment of a category of awarding bodies, exclusive of the Qualifications and Quality Assurance Authority of Ireland or certain other persons, which shall be known as "listed awarding bodies"; to provide, as a condition precedent for provisions of that Act to be invoked by providers falling within a certain category (or intending such providers), for a requirement that criteria specified in regulations, to be made by the Minister for Education and Skills, must be met, including criteria for the purpose of affording a reasonable assurance to the foregoing Authority that a foregoing provider has the capacity and capability to provide programmes of education and training consistent with the requirements of that Act; to provide for the establishment of a fund which shall be known as "Protection of Enrolled Learners Fund", into which an annual charge by certain providers must be paid and from which moneys may, in cases of default in delivery of certain programmes, be paid so to enable enrolled learners complete the programme concerned or so as to be used for certain other purposes; to make further provision regarding authorisation to use the international education mark; to add to the cases in which a provider may be authorised to describe itself as a "university" and, for that purpose, to amend the Universities Act 1997; and to provide for related matters. [23rd July, 2019]

**Be it enacted by the Oireachtas as follows:**

PART 1

PRELIMINARY AND GENERAL

**Short title and commencement**

1. (1) This Act may be cited as the Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019.

- (2) This Act shall come into operation on such day or days as the Minister for Education and Skills may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

**Definition**

2. In this Act “Principal Act” means the Qualifications and Quality Assurance (Education and Training) Act 2012.

**PART 2****AMENDMENT OF PRINCIPAL ACT****Amendment of section 2 of Principal Act (Interpretation)**

3. (1) Section 2(1) of the Principal Act is amended:
- (a) by the insertion of the following definition after the definition of “Appeals Board”:

“ ‘associated provider’ has the meaning assigned to it by section 55F(1);”;
  - (b) by the insertion of the following definition after the definition of “award”:

“ ‘award that is included within the Framework’ shall be construed in accordance with section 55B;”;
  - (c) in the definition of “designated awarding body”, by the insertion of “an Institute of Technology,” after “a technological university,” (inserted by the Technological Universities Act 2018);
  - (d) by the insertion of the following definition after the definition of “dissolved body”:

“ ‘English language education and training’ means a programme of education and training in English as a foreign language and ‘English language programme’ shall be construed accordingly;”;
  - (e) by the insertion of the following definition after the definition of “linked provider”:

“ ‘listed awarding body’ has the meaning assigned to it by section 55A(1)(a);”;
  - (f) in the definition of “relevant provider”—
    - (i) in paragraph (g), by the substitution of “section 53,” for “section 53, or”,
    - (ii) in paragraph (h), by the substitution, in subparagraph (ii), of “provider,” for “provider;”, and

(iii) by the insertion of the following paragraphs after paragraph (h)—

- “(i) an Institute of Technology,
- (j) an education and training board, or
- (k) a listed awarding body providing one or more programmes leading to its own awards that are awards included within the Framework;”;

and

(g) by the insertion of the following definition after the definition of “relevant provider”:

“ ‘Solas’ means An tSeirbhís Oideachais Leanúnaigh agus Scileanna;”.

(2) Section 2 of the Principal Act is amended by the substitution of the following subsection for subsection (2):

“(2) For the purposes of this Act, a programme of education and training is validated where the Authority confirms under section 45 that the provider of the programme has satisfied the Authority that, in respect of the period for which, by virtue of subsection (1A) or (1B) of section 45, the validation is to have effect:

- (a) an enrolled learner of that provider who completes that programme will acquire, and where appropriate, be able to demonstrate, the necessary knowledge, skill or competence to justify an award of the Authority being offered in respect of that programme;
- (b) the quality assurance procedures established under section 28 by that provider are consistent with the guidelines issued by the Authority under section 27(1) and suitable for quality assuring that programme; and
- (c) the provider has the capacity and capability to provide that programme;

and section 45 shall be construed and operate so as to require the Authority to be so satisfied as to those matters.”.

(3) Section 2(3) of the Principal Act is amended by the substitution of “provider that has a place of business in the State and is not” for “provider that is not”.

#### **Amendment of section 9 of Principal Act (Functions of Authority)**

4. (1) Section 9(1) of the Principal Act is amended:

(a) by the substitution of the following paragraph for paragraph (c):

“(c) approve a provider’s quality assurance procedures and monitor and review the effectiveness of such procedures (including such procedures as they stand amended for the time being);”;

- (b) in paragraph (j)—
    - (i) by the substitution of “awards that are awards included within the Framework” for “awards recognised within the Framework”, where it firstly occurs, and
    - (ii) by the substitution of “such awards” for “awards recognised within the Framework”, where it secondly occurs;
  - (c) in paragraph (o), by the substitution of “completion,” for “completion, and”;
  - (d) in paragraph (p), by the substitution of “appropriate,” for “appropriate.”; and
  - (e) by the insertion of the following paragraphs after paragraph (p):
    - “(q) share, as it considers appropriate, any information collected through the performance of its functions with a Department of State, the Office of the Revenue Commissioners, Solas and any other body the Authority considers appropriate, subject to the general law (and in particular the relevant law of the European Union and the Data Protection Act 2018),
    - (r) make decisions that it is appropriate that particular awards be regarded, for the purposes of this Act, as awards that are included within the Framework, and
    - (s) as an element of the process of making decisions of the foregoing kind, prepare and publish a list of awarding bodies for the purposes of having awards included within the Framework.”.
- (2) Section 9(2) of the Principal Act is amended:
- (a) in paragraph (d), by the substitution of “Minister,” for “Minister, and”;
  - (b) in paragraph (e), by the insertion, after “State Examinations Commission” of “, Solas”, and the substitution of “Authority considers appropriate,” for “Authority considers appropriate.”; and
  - (c) by the insertion of the following paragraphs after paragraph (e):
    - “(f) conduct any reviews that it considers necessary and expedient for the performance of its functions, and
    - (g) publish reports of its reviews, evaluations and determinations as it considers appropriate.”.

**Amendment of section 13 of Principal Act (Co-operation with Authority)**

5. Section 13 of the Principal Act is amended by the insertion of the following subsection after subsection (3):

“(4) In this section and section 14 a reference to a relevant provider shall be construed as including a reference to a listed awarding body,

whether or not it is a listed awarding body that falls within paragraph (k) of the definition of ‘relevant provider’ in section 2(1).”.

#### **Amendment of Principal Act – furnishing of information to other bodies**

6. The Principal Act is amended by the insertion of the following section after section 14:

##### **“Furnishing of information by Authority to other bodies**

**14A.** (1) Subject to subsection (2), the Authority may furnish to a Department of State, the Office of the Revenue Commissioners, An tÚdarás um Ard-Oideachas, Solas, the Central Applications Office and any other body the Authority considers appropriate information which comes to its attention in the course of performing its functions, and which relates to one or more functions of that other body.

(2) Subsection (1) does not apply to information that is personal data within the meaning of the General Data Protection Regulation; the furnishing to others of personal data by the Authority shall be in accordance with the general law, and in particular:

(a) the General Data Protection Regulation; and

(b) as applicable—

(i) the Data Protection Act 2018; and

(ii) any Act of the Oireachtas that is passed, before, on or after the commencement of *section 6* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*, for the purpose of, amongst other things, the regulation of the sharing of personal data (or both personal data and other information) between public bodies.

(3) In subsection (2) ‘General Data Protection Regulation’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.”.

#### **Amendment of section 27 of Principal Act (Quality assurance)**

7. Section 27 of the Principal Act is amended:

(a) by the insertion of the following subsections after subsection (1):

“(1A) As soon as practicable after the commencement of *section 7* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*, the Authority shall issue guidelines for the establishment of procedures by listed awarding bodies under section 55F(2).

(1B) The power under this section of the Authority—

- (a) to issue quality assurance guidelines, or any other guidelines, and
- (b) to establish effectiveness review procedures, or any other procedures,

includes, respectively, the power of the Authority to amend any of the foregoing guidelines, or issue guidelines to replace existing such guidelines, and the power of the Authority to amend any of the foregoing procedures, or establish procedures to replace existing such procedures.

(1C) In consequence of what is provided in the preceding subsection, a reference in this section to ‘issue’ or ‘issuing’, in respect of guidelines, or ‘establish’ or ‘establishing’, in respect of procedures, includes a reference, as the case may be—

- (a) to ‘amend’ or to ‘amending’, or
- (b) to do, or to the doing of, the act of issuing or establishing, as appropriate, guidelines or procedures by way of replacement of existing guidelines or procedures.”,

(b) by the insertion of the following subsection after subsection (4):

“(4A) Where—

- (a) quality assurance guidelines and effectiveness review procedures apply to providers, and
- (b) any or all of those providers are education and training boards or other bodies engaged in the provision of further education and training programmes, to whom moneys have been advanced under section 21 of the Further Education and Training Act 2013,

the Authority shall consult with Solas before issuing those guidelines and establishing those review procedures.”,

and

(c) by the substitution of the following subsection for subsection (6):

“(6) The Authority may—

- (a) issue different quality assurance guidelines for different relevant, linked or associated providers, or groups of relevant, linked or associated providers,
- (b) issue different quality assurance guidelines for different classes of programmes or different types of provision, and
- (c) establish different effectiveness review procedures for different relevant, linked or associated providers or groups of relevant, linked or associated providers.”.

**Amendment of section 28 of Principal Act (Obligation of providers to prepare quality assurance procedures)**

8. Section 28 of the Principal Act is amended:

- (a) in subsection (1), by the substitution of “each relevant provider, linked provider and associated provider shall establish procedures” for “each relevant provider and linked provider shall establish procedures in writing”;
- (b) in subsection (2), by the substitution of “each relevant provider, linked provider and associated provider” for “each relevant provider and linked provider”;
- (c) by the insertion of the following subsections after subsection (2):

“(2A) The quality assurance procedures established by a relevant provider, linked provider or associated provider to satisfy the provisions of section 33, 44(8) or 61(6), as appropriate, shall be for the purpose of further improving and maintaining the quality of education and training provided, organised or procured by that provider, being—

- (a) education and training that lead to one or more awards that are awards included within the Framework, or
- (b) English language education and training, the programme in respect of which the provider is authorised, under section 61(7), to use the international education mark.

(2B) Programmes of education to which section 13(3) of the Education Act 1998 applies shall not be subject to the procedures established under this section.”;

- (d) by the substitution of the following subsection for subsection (3):

“(3) Procedures under subsection (1) shall be established—

- (a) as soon as practicable after the issue of guidelines by the Authority under section 27(1)(a), and
- (b) in addition to what is provided in paragraph (a), in the following cases at such other time or times:
  - (i) subject to subparagraphs (ii) to (iv), by a relevant provider, linked provider or associated provider where the relevant provider, linked provider or associated provider, as the case may be, thinks appropriate;
  - (ii) in the case of a relevant provider, by the relevant provider where the Authority directs it to do so;
  - (iii) in the case of a linked provider, by the linked provider where the relevant designated awarding body directs it to do so;
  - (iv) in the case of an associated provider, by the associated provider where the relevant listed awarding body directs it to do so,

and, in the case of a direction under subparagraph (ii), (iii) or (iv), the procedures shall be established in compliance with the direction within such period as the Authority or, as the case may be, the other body giving the direction determines and specifies in the direction in that behalf.”;

and

(e) in subsection (4)(b), by the substitution of “implementation” for “application”.

**Condition precedent for provisions of Principal Act to be invoked by specified providers – criteria specified in regulations must be met**

9. The Principal Act is amended by the insertion of the following sections after section 29:

**“Condition precedent for provisions of Act to be invoked by specified providers – criteria specified in regulations to be met**

**29A.** (1) A specified provider, other than a provider referred to in section 65(6), shall demonstrate to the Authority that it meets the criteria specified in regulations under section 29B(1) in any of the following cases, namely:

- (a) a case in which the provider invokes, for the first time, any provision of this Act;
- (b) a case in which—
  - (i) the provider who, having invoked (whether before, on or after the operative date) any provision of this Act, subsequently invokes any provision of this Act, and
  - (ii) the Authority, in its discretion, on that provision being invoked by the provider, requests the provider to demonstrate to the Authority that it meets those criteria;
- (c) a case in which the Authority—
  - (i) takes any action (including by way of review of any matter) authorised or required by this Act to be taken in respect of the provider, and
  - (ii) for the purpose of such action, in its discretion, requests the provider to demonstrate to the Authority that it meets those criteria,

and—

- (i) this section applies notwithstanding any other provision of this Act, and
- (ii) subsections (4) and (5) of section 29C supplement this section by requiring the Authority to do (or not to do) one or more things in

cases in which a failure to demonstrate that those criteria are met occurs or in which those criteria cease to be met.

- (2) For the purposes of this section, a provision of this Act is invoked if—
- (a) an application under a provision of this Act, as it relates to the provision by the specified provider concerned of a programme of education and training or otherwise, is made, or
  - (b) subject to subsection (4), any step, as it relates to the provision by the specified provider concerned of a programme of education and training or otherwise, is taken by the provider on the basis that the conditions specified by or under this Act for the taking of the step are satisfied.

- (3) In this section and sections 29B and 29C—

- (a) ‘specified provider’ means—

- (i) a relevant provider,
- (ii) a listed awarding body (so far as it does not otherwise fall within this definition by virtue of subparagraph (i)), and
- (iii) an associated provider, or a linked provider, that offers, for reward, a programme of education and training leading to an award that is an award included within the Framework,

and the reference in this paragraph to a relevant provider includes a reference to a person who will fall within the definition of that expression in section 2(1) on the doing of the one or more things, specified in the relevant paragraph of that definition, the doing of which constitute the person as a relevant provider;

- (b) a reference to—

- (i) a specified provider demonstrating to the Authority that it meets the criteria specified in regulations under section 29B(1), or
- (ii) such a provider meeting, or not meeting, those criteria or ceasing to meet them,

shall, where regulations made under subsection (1) of section 29B provide for what are referred to in subsection (3) of that section as related criteria in respect of a specified provider, be deemed to include a reference to—

- (I) a specified provider demonstrating to the Authority that those related criteria are met in respect of it, or
- (II) where the context requires, those related criteria being met, not being met or ceasing to be met in respect of it,

as the case may be;

- (c) a reference to provision of a programme of education and training or otherwise includes a reference to authorisation to use the international education mark; and
  - (d) ‘operative date’ means the date of commencement of *section 9* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*.
- (4) Subsection (2)(b) does not apply to a provider referred to in subsection (1)(b) where, by reason of its previous invocation (as mentioned in subsection (1)(b)), of a provision of this Act, the conditions specified by or under this Act for the taking of the particular step concerned are satisfied.

**Regulations specifying criteria concerning capacity and capability of providers and related criteria**

- 29B.** (1) The Minister shall, as soon as practicable after the operative date, make regulations specifying the criteria that (in the case of a specified provider that meets the criteria) will, in the Minister’s opinion, afford a reasonable assurance to the Authority that the specified provider has the capacity and capability to—
- (a) implement quality assurance procedures, and
  - (b) provide programmes of education and training consistent with the requirements of this Act,
- and criteria specified in regulations made under this subsection are referred to subsequently in this section as ‘the relevant criteria’.
- (2) The relevant criteria may include—
- (a) criteria as to the specified provider being a fit and proper person to provide programmes of education and training,
  - (b) criteria related to the possession of a particular legal personality by the specified provider, the possession by it of adequate financial resources to ensure the viability of its business and the securing by it of arrangements to ensure its good corporate governance, and
  - (c) criteria related to the compliance by the specified provider with any enactment or instrument under an enactment (including any enactment or such an instrument passed or made after the operative date) imposing obligations on employers with respect to their employees or making provision in relation to any such obligations.
- (3) With prejudice to subsection (2)(a), the relevant criteria, in the case of a specified provider that is a body corporate or an unincorporated body of persons, may include the following related criteria in respect of it, that is to say criteria as to every person who falls in the description

contained in paragraph (a) or (b) (in his or her capacity as described therein) being a fit and proper person, namely:

- (a) a director of the provider or other person holding a position on its board of management or, where the affairs of the provider are managed by its members, each member of it;
  - (b) a person employed by the provider whose duties include making decisions that, to a significant extent, could affect the management of the provider.
- (4) A specified provider may request, in writing, the Authority to make a determination as to whether or not, at the date of the request, the provider meets the relevant criteria and a request under this subsection shall be accompanied by the payment by the requester of such fee (if any) as may be determined by the Authority under section 80.
- (5) As soon as may be after the making of a request under and in accordance with subsection (4), the Authority shall consider the request and, for that purpose, may require the requester to submit to it such information and documents as it may reasonably require; on completion of its consideration of the request the Authority shall make a determination as to whether or not, at the date concerned, the requester meets the relevant criteria and shall notify the requester of the determination.
- (6) A provider who knowingly makes to the Authority, on foot of a requirement made of it by the Authority under subsection (5), a statement which is false or misleading in a material respect commits an offence.
- (7) Nothing in this section or section 29C shall be construed as being applicable to a provider specified in section 65(6).

**Supplemental provisions in relation to sections 29A and 29B (including provision for refusals of applications, etc., where relevant criteria not shown to be met)**

- 29C.** (1) In this section ‘relevant criteria’ means criteria specified in regulations made under section 29B(1).
- (2) Where a material change occurs in relation to a specified provider that could reasonably be said to affect its ability to continue to meet the relevant criteria, the provider shall notify the Authority immediately of the change.
  - (3) Without prejudice to section 29B(4), the Authority may, at any time, require a specified provider to demonstrate that it continues to meet the relevant criteria.
  - (4) If, by virtue of section 29A(1), a requirement to demonstrate that the relevant criteria are met falls on a specified provider in consequence

of an application that the provider has made under this Act, and, in the opinion of the Authority, the provider has failed to demonstrate that the provider meets those criteria, the Authority shall refuse the application and the provision that is made by this Act for an appeal to be taken where an application of the type concerned is refused on any ground specified in the provision shall be construed and operate so as to enable the provider to appeal, under that provision, the first mentioned refusal.

- (5) If, in the opinion of the Authority, a specified provider has ceased to meet the relevant criteria, the Authority shall withdraw—
- (a) its approval, in respect of the provider, of the procedures established under section 28,
  - (b) validation of any programmes of education and training of the specified provider which the Authority has validated under section 45,
  - (c) any authority to make awards delegated to the specified provider under section 53, and
  - (d) authorisation to use the international education mark where the specified provider is authorised to use the international education mark under section 61.
- (6) However the steps that this Act requires be first taken where a withdrawal, under another provision of this Act, of approval, validation or other such matter in respect of a foregoing thing is proposed to be effected shall, also, be first taken where such a withdrawal under subsection (5) in respect of the thing concerned is proposed to be effected.
- (7) The provision that is made by this Act for an appeal to be taken where an approval, validation or other such matter is withdrawn in respect of a foregoing thing, on any ground specified in that provision, shall be construed and operate so as to enable the specified provider to appeal, under that provision, such a withdrawal under subsection (5) in respect of the thing concerned.”.

**Amendment of section 30 of Principal Act (Quality assurance procedures and relevant providers, other than previously established universities)**

10. Section 30 of the Principal Act is amended—

- (a) by the substitution of the following subsections for subsection (1):

“(1) Before establishing procedures under section 28 (being the first occasion of the relevant provider establishing such procedures) a relevant provider shall submit a draft of the proposed procedures to the Authority for approval, accompanied by such fee (if any) as may be

determined by the Authority under section 80, but this subsection does not apply to a previously established university.

- (1A) Where a relevant provider has established procedures under section 28 (being the first occasion of such procedures having been established by it), procedures that, subsequent to that occasion, are proposed to be established by it under that section do not require approval under this section. However, the Authority may evaluate any subsequent such procedures with respect to their suitability in the course of considering or conducting, as appropriate—
- (a) an application for validation of a programme of education and training under section 44(5),
  - (b) a review of a programme of education and training under section 46,
  - (c) a request for delegation of authority to make an award under section 52,
  - (d) an application for authorisation to use the international education mark under section 61(3), or
  - (e) a review under section 34.”,

and

- (b) by the insertion of the following subsection after subsection (8):

“(9) The Authority may impose conditions, in relation to quality assurance, on a relevant provider whose procedures it has approved under this section and the provider shall comply with those conditions.”.

**Amendment of section 34 of Principal Act (Review by Authority of quality assurance procedures of relevant providers)**

11. Section 34 of the Principal Act is amended by the insertion of the following subsection after subsection (4):

“(4A) The Authority shall consult with Solas in carrying out a review under subsection (1) where—

- (a) that review relates to a relevant provider, and
- (b) that relevant provider is an education and training board or other body engaged in the provision of further education and training programmes, to whom moneys have been advanced under section 21 of the Further Education and Training Act 2013.”.

**Amendment of section 36 of Principal Act (Withdrawal by Authority of approval of quality assurance procedures)**

12. Section 36 of the Principal Act is amended by the insertion of the following subsection

after subsection (5):

“(5A) A relevant provider may, in relation to quality assurance procedures that have been established by it and which stand approved by the Authority, give notice in writing to the Authority that it no longer wishes those procedures to stand approved by the Authority; on receipt of such a notice, the Authority may withdraw its approval of those procedures, without the need for a review, by notice in writing addressed to the provider.”.

**Amendment of section 42 of Principal Act (Quality reviews by Authority)**

**13.** Section 42 of the Principal Act is amended by the insertion of the following subsection after subsection (2):

“(2A) The Authority shall consult with Solas in carrying out a review under subsection (1) where—

- (a) that review relates to a relevant provider, and
- (b) that relevant provider is an education and training board or other body engaged in the provision of further education and training programmes, to whom moneys have been advanced under section 21 of the Further Education and Training Act 2013.”.

**Amendment of section 43 of Principal Act (Framework of qualifications)**

**14.** Section 43 of the Principal Act is amended—

- (a) in subsection (2), by the substitution of the following paragraphs for paragraphs (a) and (b):

“(a) review and further develop the policies and criteria on which the Framework is based,

(b) promote, maintain, further develop and implement the Framework as a system—

(i) of levels and types of awards based on standards of knowledge, skill or competence to be acquired by a learner to entitle the learner to an award at a particular level, and of the type concerned, within the Framework, and

(ii) for the development, recognition and award of qualifications in the State,”

- (b) by the insertion of the following subsection after subsection (2):

“(2A) Sections 55A to 55I make provision for the process by which an award acquires the status of being an award that is included within the Framework.”,

(c) by the substitution of the following subsections for subsections (3) to (5):

“(3) Each designated awarding body and listed awarding body, shall, in respect of each award that the body makes that is an award included within the Framework:

(a) take such steps (whether by way of co-operation or consultation with the Authority or otherwise) as will facilitate the performance by the Authority of its functions in so far as those functions relate to awards included within the Framework (referred to in paragraph (b) as ‘relevant functions’);

(b) provide to the Authority such information as the Authority may from time to time require for the performance by it of relevant functions.

(4) Each designated awarding body shall ensure, in so far as is reasonably practicable, that each award that it makes is an award that is included within the Framework.

(5) Each—

(a) designated awarding body,

(b) provider to whom the Authority has delegated authority to make awards, and

(c) body that makes an award under the Education Act 1998 that stands specified by the Minister to be an award that falls within this paragraph,

shall cooperate with the Authority in the implementation of policies and criteria established under section 55E(1)(b).

(6) Each designated awarding body and each listed awarding body shall, in respect of each award the body makes that is an award included within the Framework, ensure that a learner acquires the standard of knowledge, skill or competence associated with the level of that award within the Framework before and when the award is made.

(7) Subsection (8) applies to each provider of a programme of education and training, being a programme that leads to an award that is an award included within the Framework.

(8) In respect of each such programme, its provider shall ensure that an enrolled learner acquires the standard of knowledge, skill or competence associated with the level of the award concerned within the Framework before the award is made.”.

**New section 43A of Principal Act – offence to provide or advertise cheating services**

**15.** The Principal Act is amended by the insertion of the following section after section 43:

**“Offence to provide or advertise cheating services**

- 43A.** (1) A person who does any of the acts specified in subsection (2) commits an offence.
- (2) Each of the following is an act referred to in subsection (1):
- (a) undertaking in whole or in part, in the enrolled learner’s stead, an assignment or any other work that an enrolled learner is required to undertake as part of a programme, without authorisation from the person making the requirement;
  - (b) sitting an examination that an enrolled learner is required to sit as part of a programme, in the enrolled learner’s stead, or providing another person to sit the examination in place of the enrolled learner, without authorisation from the person setting the examination;
  - (c) during the course of an examination that an enrolled learner is required to undertake as part of a programme, either—
    - (i) providing to the enrolled learner, or
    - (ii) arranging the provision, to him or her, of, answers for the examination, without authorisation from the person setting the examination.
- (3) A person who does either of the acts specified in subsection (4) with the intention of giving an enrolled learner an unfair advantage over other similarly enrolled learners commits an offence.
- (4) Each of the following is an act referred to in subsection (3):
- (a) providing or arranging the provision of an assignment that an enrolled learner is required to undertake as part of a programme, without authorisation from the person making the requirement;
  - (b) at any time before the beginning of an examination that an enrolled learner is required to undertake as part of a programme, either—
    - (i) providing to the enrolled learner, or
    - (ii) arranging the provision, to him or her, of, answers for the examination, without authorisation from the person setting the examination.
- (5) A person commits an offence if the person advertises that the person will perform—
- (a) any service consisting of the doing of any act specified in subsection (2), or

- (b) any service consisting of the doing of either act specified in subsection (4) knowing that the service has or would have the effect of giving an enrolled learner an unfair advantage over other similarly enrolled learners.
- (6) A person commits an offence who publishes—
  - (a) an advertisement for any service consisting of the doing of any act specified in subsection (2), or
  - (b) an advertisement for any service consisting of the doing of either act specified in subsection (4) knowing that the service has or would have the effect of giving an enrolled learner an unfair advantage over other similarly enrolled learners.
- (7) In this section ‘programme’ does not include post-primary schooling leading to the sitting of the Junior Certificate or Leaving Certificate examination or any examination prescribed under section 50(2) of the Education Act 1998.”.

**Amendment of section 44 of Principal Act (Application for validation of programme of education and training)**

16. Section 44 of the Principal Act is amended:

- (a) in subsection (7)—
  - (i) in paragraph (a), by the insertion, after “section 28”, of “and those procedures address the programme for which validation is sought”, and
  - (ii) by the deletion of paragraph (c),
- (b) in subsection (9)—
  - (i) by the substitution of the following paragraph for paragraph (a):
    - “(a) each Institute of Technology, in relation to programmes leading to doctoral degrees included within the Framework,”,
  - (ii) by the insertion of the following paragraph after paragraph (g):
    - “(h) an education and training board,”,
- and
- (iii) by the substitution of “that provider or, in the case of programmes referred to in paragraph (a), each such programme of the Institute of Technology concerned.” for “that provider.”.

**Amendment of section 45 of Principal Act (Determination of application for validation of programme of education and training)**

17. Section 45 of the Principal Act is amended:

(a) by the insertion of the following subsections after subsection (1):

“(1A) A validation under subsection (1) of a programme of education and training shall have effect for such period as the Authority determines and specifies in the validation, but subsection (1B) applies so as to provide that, in the circumstances specified in that subsection and in relation to the learner there referred to, a programme of education and training shall, for the purposes of this Act, be deemed to be validated notwithstanding the fact that the foregoing period has expired.

(1B) In circumstances in which a learner—

(a) is enrolled on a programme of education and training before the expiry of the period specified, under subsection (1A), in the validation with respect to that programme, and

(b) completes, in accordance with its terms, that programme after that expiry,

that programme shall, in relation to that learner, be deemed to be validated for the purposes of this Act notwithstanding the expiry of the period so specified.”,

and

(b) in subsection (3)(c), by the deletion of “in respect of arrangements for the protection of enrolled learners”.

#### **Amendment of section 47 of Principal Act (Withdrawal of programme validation)**

**18.** Section 47 of the Principal Act is amended by the insertion of the following subsections after subsection (5):

“(6) The Authority may, by notice in writing addressed to the provider of the programme, withdraw its validation of a programme, without the need for a review, in any of the following cases:

(a) the provider has given notice in writing to the Authority that it no longer wishes to provide the programme for whatever reason;

(b) the provider has not offered the programme for a period of at least 2 years, from the date of the programme’s validation;

(c) no learner has been enrolled on the programme for at least 2 years;

(d) the Authority and the provider agree to the withdrawal of the validation.

(7) A notice under subsection (6) shall state the reasons for the withdrawal referred to in that subsection.

- (8) Where the Authority withdraws its validation of a programme of education and training under subsection (6)(b) or (c), the provider concerned may appeal against that withdrawal to the Appeals Panel.”.

**Amendment of section 48 of Principal Act (Arrangement between providers and awarding bodies other than the Authority)**

**19.** Section 48 of the Principal Act is amended—

- (a) in subsection (1)(b), by the substitution of “an award included within the Framework” for “recognised within the Framework”, and
- (b) by the insertion of the following subsection after subsection (2):
- “(3) For the period of 5 years from the commencement of *section 23* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*, paragraph (b) of subsection (1) shall not apply to an arrangement referred to in that subsection if the arrangement has been entered into before the commencement of that *section 23*.”.

**Amendment of section 50 of Principal Act (Making of an award)**

**20.** Section 50 of the Principal Act is amended:

- (a) by the substitution of the following subsection for subsection (3):
- “(3) The Authority shall, on the application of a relevant provider, and in accordance with the policies and criteria established under subsection (1), and having regard to the procedures established by the provider under section 56(2), make an award to a learner where the learner has, in the opinion of the provider, acquired, and where appropriate, demonstrated, the appropriate standard of knowledge, skill or competence as determined by the Authority under section 49(1).”;
- and
- (b) by the deletion of subsection (7).

**Amendment of section 52 of Principal Act (Request by provider for delegation of authority to make award)**

**21.** Section 52 of the Principal Act is amended:

- (a) in subsection (1), by the insertion of “and the suitability of the quality assurance procedures established by the provider under section 28” after “the request”;
- (b) in subsection (2), by the substitution of the following paragraph for paragraph (a):
- “(a) an Institute of Technology, in relation to programmes leading to doctoral degrees included within the Framework;”;

(c) in subsection (3)—

(i) by the substitution of the following paragraph for paragraph (a):

“(a) the provider has established procedures for quality assurance under section 28 that will address, in a manner that is appropriate, the delegation of authority that is to be requested and the programmes related to it.”,

and

(ii) by the deletion of paragraph (c);

(d) in subsection (11)—

(i) by the deletion of “either or both”, and

(ii) by the substitution of the following paragraphs for paragraphs (a) and (b):

“(a) either or both—

(i) programmes which lead to awards that are awards included within the Framework or included at—

(I) a specific level within, or

(II) levels falling in a specific range within,

the Framework,

(ii) programmes in a particular subject area included within the Framework (whether included within it at a specific level or at levels as described in subparagraph (i)(II)),

(b) any other grouping (by reference to such matters as the Authority considers appropriate) of programmes that the Authority deems to be necessary or expedient.”.

**Amendment of section 53 of Principal Act (Determination of request for delegation of authority to make award)**

22. Section 53 of the Principal Act is amended, in subsection (4)(a)(iii), by the deletion of “in respect of arrangements for the protection of enrolled learners”.

**New sections 55A to 55I of Principal Act – awards included within Framework (process by which awards acquire such status)**

23. The Principal Act is amended by the insertion of the following sections after section 55:

**“Sections 55A to 55I (Interpretation)**

**55A.** (1) In sections 55B to 55I—

(a) ‘listed awarding body’ means an awarding body whose name, for the time being, appears in the list of awarding bodies;

- (b) ‘list of awarding bodies’ shall be construed in accordance with section 55C(3);
  - (c) ‘operative date’ means the date of commencement of *section 23* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*;
  - (d) a reference to an affirmative decision made, or that will be made, under section 55D, in relation to an award, is a reference to a decision made, or that will be made, under that section that it is appropriate that the award be regarded as one that is included within the Framework.
- (2) The power of the Authority, under any of sections 55B to 55I, to make decisions in relation to awards (including where the context is of a decision, under section 55C(5), in relation to an awarding body with reference to awards) is a power that is exercisable in relation to awards generally (of the specific type or class concerned) as distinct from being a power exercisable in relation to the individual instances of the award being made to a person.

**Awards included within Framework (process by which awards acquire such status)**

**55B.** (1) For the purposes of this Act, an award shall be regarded as an ‘award that is included within the Framework’ if, in accordance with sections 55C and 55D, the Authority makes the following decisions in that behalf, namely—

- (a) firstly – with respect to the body that will make the particular award, and on the assumption that the decision referred to in paragraph (b) with respect to that award will be an affirmative decision – a decision, under section 55C(5), that it is an appropriate body, with reference to the particular award, to make such an award, and
- (b) following the making of that decision – a decision under section 55D that it is appropriate that the particular award be regarded as one that is included within the Framework,

but this is subject to subsections (2) to (4) and sections 55D(7) and 55I.

- (2) Subsection (1)(a) does not apply to an award that is made by—
- (a) the Authority,
  - (b) a designated awarding body,
  - (c) a provider to whom the Authority has delegated authority to make awards, or

- (d) a body that makes an award under the Education Act 1998 that stands specified by the Minister to be an award that falls within this paragraph,

and, accordingly, with respect to an award to be made by the Authority or by any foregoing body or provider and without prejudice to subsection (3), an affirmative decision under section 55D suffices for the award to be regarded, for the purposes of this Act, as an award that is included within the Framework.

- (3) In respect of an award made by a designated awarding body, such an award shall, without the need for the making of a decision under section 55D, be regarded as an award that is included within the Framework if—

- (a) arrangements of the kind referred to in subsection (4) have been put in place by the designated awarding body and the Authority, and

- (b) on foot of those arrangements, the Authority—

- (i) expresses its agreement with the view, concerning that award, of the designated awarding body referred to in paragraph (a) of subsection (4), and

- (ii) notifies the body, in writing, to that effect,

and an award, the subject of such a notification, is referred to subsequently in this Act as a ‘section 55B(3) award’.

- (4) The arrangements referred to in subsection (3) are arrangements that consist of the following 2 procedures—

- (a) a procedure under which, following its forming such a view in relation to an award it makes, a designated awarding body may, by notice in writing served on the Authority, state that the body is of the view it is appropriate that the award be regarded as an award that is included within the Framework, and

- (b) a procedure under which the Authority may—

- (i) having had regard to the view of the body expressed in that notice, and

- (ii) having consulted with the body,

express the agreement of the Authority with that view.

- (5) Notwithstanding that a section 55B(3) award has not been preceded by the making of a decision by the Authority under section 55D in relation to it, a section 55B(3) award shall for the purposes, and the purposes only, of subsections (6) to (8) of section 55D (and the relevant provisions of sections 55I and 80 referred to in those

subsections) be deemed to have been the subject of an affirmative decision made under section 55D.

**Listing of an awarding body – decision as to whether it is appropriate that such a body make a particular award and related matters**

**55C.** (1) The purpose for which provision for—

(a) the establishment of the category next referred to in this section, and

(b) the procedures for the listing of awarding bodies,

is made by this section is so that an award, being an award—

(i) the subject of an affirmative decision under section 55D, and

(ii) made by an awarding body whose name appears in the list of awarding bodies,

is, for the purposes of this Act, an award included within the Framework.

(2) On the completion of the steps specified in subsection (3), there shall stand established under this Act a category of awarding bodies, exclusive of the Authority or a body or provider referred to in section 55B(2), and the category so established shall be known, and is in this Act referred to, as ‘listed awarding bodies’.

(3) As soon as practicable after the operative date, the Authority shall prepare, maintain and publish a list which shall be known, and is in this Act referred to, as the ‘list of awarding bodies’.

(4) There shall be included in the foregoing list the name of each awarding body (other than the Authority or a body or provider referred to in section 55B(2))—

(a) that makes an application to the Authority for the inclusion by the Authority of its name in the list with reference to one, or more than one award, proposed to be made by it, and

(b) the inclusion of whose name in the list, on foot of such an application, is acceded to by the Authority following a decision under subsection (5) by the Authority that the awarding body is an appropriate body, with reference to that award, to make such an award.

(5) Following receipt of the foregoing application and subject to subsections (6) and (7), the Authority shall make a decision as to whether the applicant awarding body is an appropriate body, with reference to the award concerned, to make such an award.

(6) For the purpose of its making a decision under subsection (5) and that purpose only, the Authority shall proceed on the assumption that an

affirmative decision will be made under section 55D in relation to the award referred to in subsection (4)(b).

- (7) For the purpose of its making a decision under subsection (5), the Authority shall have regard to the policies and criteria established under section 55E(1)(a).
- (8) A reference in subsection (4) to the inclusion by the Authority of a name in the list of awarding bodies includes a reference to the Authority's accepting a name for inclusion in that list (following a decision under subsection (5) that the body concerned is an appropriate body as there referred to) pending completion by it of the steps under subsection (3) which lead to that list's preparation.
- (9) An application under subsection (4) shall be accompanied by such fee (if any) as may be determined by the Authority under section 80.
- (10) The Authority shall establish procedures that are to be followed by it in making a decision under subsection (5).
- (11) If the Authority decides to refuse an application made by an awarding body under subsection (4)(a), the awarding body may appeal against that decision to the Appeals Panel.
- (12) The Authority shall publish procedures established under subsection (10) in such form and manner as it thinks appropriate (including on the internet).

**Decision that award is an appropriate one to be included in Framework**

- 55D.** (1) On an application in that behalf by the awarding body that intends to make the particular award, whether—
- (a) a listed awarding body,
  - (b) save where the award concerned of such a body is a section 55B(3) award, a designated awarding body, or
  - (c) a body or provider referred to in section 55B(2)(c) or (d),
- the Authority shall make a decision as to whether it is appropriate that the award be regarded as one that is included within the Framework.
- (2) Save where, in the case of a particular class of award, the making of a decision as to its status (by reference to the Framework) is, in the opinion of the Authority, unnecessary, the Authority shall make a decision as to whether it is appropriate that an award of the Authority be regarded as one that is included within the Framework.
  - (3) In making a decision under this section, the Authority shall have regard to the policies and criteria established under section 55E(1)(b).
  - (4) An application under subsection (1) shall be accompanied by such fee (if any) as may be determined by the Authority under section 80.

- (5) If the Authority decides to refuse an application made by an awarding body under subsection (1), the awarding body may appeal against that decision to the Appeals Panel.
- (6) If the Authority makes an affirmative decision under this section with respect to an award of a listed awarding body or a body or provider referred to in section 55B(2)(b), (c) or (d), the awarding body concerned shall pay to the Authority—
- (a) within one month of the date of the decision, in consideration of the benefit that is conferred by reason of that decision, such fee (if any) as may be determined by the Authority under section 80, and which benefit is referred to in that section as the ‘benefit of a decision under section 55D’, and
  - (b) within one month of each anniversary of the date of the decision, in consideration of the benefit that continues to be conferred by reason of that decision, such fee (if any) as may be determined by the Authority under section 80, and which benefit is referred to in that section as the ‘continuing benefit of a decision under section 55D’,
- but paragraph (b) does not apply if, on or before the anniversary referred to in that paragraph or during the month following it, the award concerned has ceased, by virtue of section 55I(1), to be regarded for the purposes of this Act as an award that is included within the Framework.
- (7) If default is made by an awarding body in complying with subsection (6), then unless the Authority determines that the period for the payment of the fee concerned ought to be extended (and extends the period accordingly and the fee is paid to it within that extended period), the award of the awarding body shall, from such date as the Authority specifies, not be regarded, for the purposes of this Act, as an award that is included within the Framework.
- (8) Where, under subsection (7), an award ceases to be regarded, for the purposes of this Act, as an award that is included within the Framework, subsection (2) of section 55I shall apply as it applies in the case of subsection (1) of that section but with the substitution of references to the making of default in compliance (by the awarding body) with subsection (6) of this section for references to the deletion of the awarding body’s name from the list of awarding bodies.

**Policies and criteria for making decisions under sections 55C(5) and 55D**

**55E.** (1) As soon as practicable after the operative date, the Authority shall establish policies and criteria to which regard shall be had by the Authority in making—

- (a) a decision under section 55C(5), and

- (b) a decision under section 55D.
- (2) The Authority shall publish the policies and criteria established under subsection (1) in such form and manner as it thinks appropriate (including on the internet).
- (3) The reference in subsection (1) to policies and criteria, so far as that subsection relates to a decision under section 55C(5), shall be deemed to include a reference to minimum requirements, that is to say requirements that must first be fulfilled before the Authority may make a decision under section 55C(5) that the relevant awarding body is an appropriate body, with reference to a particular award, to make such an award.
- (4) A requirement of the kind referred to in subsection (3) may include a requirement that the making of an application, under section 55C(4) (a), by an awarding body has been endorsed by a public authority of such class as is specified by the Authority in the requirement, and, for the purposes of this subsection, ‘public authority’ includes the Minister, any other Minister of the Government, An tÚdarás um Ard-Oideachas, Solas, a professional recognition body and a designated awarding body.
- (5) The Authority may establish different policies and criteria under subsection (1)(b) in respect of different awards.
- (6) Subsection (7) applies so far as the number of awards that, for the time being, stand included within the Framework is attributable to the policies and criteria established under subsection (1)(b).
- (7) The Authority shall, in establishing policies and criteria under subsection (1)(b), have regard to the need to ensure:
- (a) that the number of awards included within the Framework provides a reasonable level of choice for learners; and
  - (b) that the number of awards included within the Framework that are awards with similar learning outcomes is not excessive.
- (8) In addition to what is provided in subsection (7), the Authority shall, in establishing policies and criteria under subsection (1)(b), have regard to:
- (a) the reasonable requirements of learners;
  - (b) the reasonable requirements of industry, agriculture, business, tourism and trade, the professions and the public service;
  - (c) the extent to which present and past awards in the State serve or served their educational purpose and the needs of the economy;
  - (d) any consultation, concerning the education and training needs of learners, engaged in by it with—

- (i) bodies with responsibility for managing the provision of education and training that is funded by the Exchequer, and
  - (ii) bodies that regulate one or more professions;
- and
- (e) such aspects of Government policy as the Minister may specify for the purposes of this paragraph.
- (9) The Authority may consult with another public body, including a public body that is established outside the State, where it considers that it is appropriate to do so for the efficient and effective operation of policies and criteria established under subsection (1).
- (10) The Authority shall, within 5 years after the establishment of policies and criteria under subsection (1) and at least once in every period of 5 years thereafter, review those policies and criteria.

#### **Duties of listed awarding bodies**

- 55F.** (1) In this section ‘associated provider’ means a provider, having a place of business in the State, that enters into an arrangement with a listed awarding body under which arrangement the provider provides a programme of education and training that satisfies all of the prerequisites for an award of the listed awarding body that is included within the Framework.
- (2) A listed awarding body shall establish procedures for the quality assurance of its awards and for the external quality assurance of providers who, in relation to it, are associated providers.
- (3) The Authority may give one, or more than one, direction to a listed awarding body requiring the body to impose on a provider, who, in relation to the listed awarding body, is an associated provider, obligations to which subsection (4) applies, and obligations, so imposed, shall be complied with by the provider accordingly.
- (4) This subsection applies to obligations (which shall be specified in the direction concerned under subsection (3))—
- (a) the imposition of which, in the opinion of the Authority, is necessary or expedient, and
  - (b) that are to apply to, or in respect of, the provider’s activities as an associated provider in relation to the awarding body.
- (5) Without prejudice to the generality of subsection (4), the obligations to which that subsection applies include obligations with respect to the employment of—
- (a) procedures for access, transfer and progression of learners,
  - (b) procedures for quality assurance, and

- (c) procedures, which are fair and consistent, for the assessment of enrolled learners to ensure the standards of knowledge, skill or competence determined by the awarding body concerned (before awards that are included within the Framework are made by that body) are acquired and, where appropriate, demonstrated, by enrolled learners.
- (6) For the purposes of the compliance by an associated provider with the obligation referred to in paragraph (a) of subsection (5) to employ the procedures referred to in that paragraph, the associated provider shall have regard to the policies and criteria established by the Authority under subsection (1) of section 56 if that subsection would otherwise not apply.
- (7) A listed awarding body shall—
  - (a) co-operate with the Authority in the performance of the Authority's functions in so far as those functions relate to the inclusion of awards within the Framework,
  - (b) monitor compliance by an associated provider, on whom it has imposed obligations pursuant to a direction under subsection (3), with those obligations,
  - (c) review from time to time, and not less than once every 5 years, or at any time upon the request of the Authority, compliance by such an associated provider with the foregoing obligations,
  - (d) if such an associated provider has failed in a material respect to comply with any of the foregoing obligations, discontinue (after having afforded the provider a reasonable opportunity to make representations in writing that the grounds for such discontinuance do not exist in the particular case) any arrangement that exists between it and the associated provider under which arrangement the provider provides a programme referred to in subsection (1),
  - (e) provide to the Authority such information as the Authority may from time to time require for purposes of the performance of its functions in relation to awards included within the Framework, and
  - (f) comply with any condition that the Authority imposes, by notice in writing given to the body, on the awarding body concerned, being a condition the imposition of which the Authority considers to be necessary or expedient so as to maintain the integrity and standing of the Framework.
- (8) Without prejudice to the generality of paragraph (e) of subsection (7), the information that the Authority may require to be provided under that paragraph includes—

- (a) particulars of providers who, in relation to the listed awarding body concerned, are associated providers,
  - (b) particulars of programmes of education and training validated by the Authority or otherwise included within the Framework that lead to awards of the listed awarding body concerned that are included within the Framework,
  - (c) any report prepared by the listed awarding body concerned on foot of a review carried out by it with respect to the provision of programmes of education and training that lead to awards of the body that are included within the Framework, and
  - (d) numbers of awards made by the listed awarding body concerned that are included within the Framework.
- (9) An awarding body that is not a listed awarding body but which claims or represents that it is such an awarding body commits an offence.

#### **Review of listed awarding bodies**

**55G.** (1) The Authority shall—

- (a) at least once every 7 years, and
  - (b) from time to time as the Authority thinks appropriate,  
 review the operation and management of each listed awarding body in so far as that operation and management relates to—
    - (i) awards of the listed awarding body that are included within the Framework,
    - (ii) the listed awarding body's implementation of the procedures established by it under section 55F(2), and
    - (iii) the fulfilment by the listed awarding body of its duties under section 55F(7)(b) and (c).
- (2) The Authority shall establish and publish in such form and manner as it thinks appropriate (including on the internet) procedures and criteria for conducting reviews under subsection (1).
- (3) A listed awarding body subject to review under subsection (1) shall pay to the Authority within one month of the completion of the review such fee (if any) as may be determined by the Authority under section 80.
- (4) In conducting a review under subsection (1), the Authority may have regard to any other review conducted under this Act.
- (5) The Authority shall prepare a report setting out the results of a review conducted under subsection (1).

- (6) The Authority shall provide a copy of the report under subsection (5) to the awarding body concerned and, in providing the report to it, the Authority shall state to the awarding body that it may, within one month from the provision of the report to it, submit observations in writing to the Authority in relation to the report, and the awarding body may submit such observations accordingly.
- (7) After consideration of any observations submitted to it in accordance with subsection (6), the Authority may make any amendments to the report that the Authority considers appropriate. If such amendments are made to it, a copy of the report, as so amended, shall be provided by the Authority to the awarding body concerned.
- (8) The Authority shall publish the report prepared under subsection (5), or, if it has been amended under subsection (7), the report as amended under the latter subsection, in such form and manner as the Authority thinks appropriate (including on the internet).
- (9) Where, following a review under this section, the Authority gives a notice under section 55H(4) to the awarding body concerned, then subsections (6), (7) and (8) shall not apply in that particular case.
- (10) Where—
- (a) a listed awarding body is a body established under the law of a state, other than the State, and
  - (b) apart from the provision made by this Act for the Authority to exercise powers in relation to it, that awarding body is subject to regulation or quality assurance by an agency established outside the State,

the Authority may, for the purpose of conducting a review under subsection (1) in respect of that awarding body, cooperate with that agency.

#### **Withdrawal or variation of listing of awarding bodies**

**55H.** (1) Where, following a review under section 55G in respect of a listed awarding body, the Authority is of the opinion that, on any of the grounds specified in subsection (3), either—

- (a) it is no longer appropriate that the awarding body's name stand included in the list of awarding bodies with reference (as the Authority considers appropriate) either—
  - (i) to each of the one or more awards as respects which the body's name had been included in that list (a 'whole deletion'), or
  - (ii) to such one or more (as the Authority specifies), but not all, of those awards (a 'partial deletion'),

or

(b) the conditions for the time being imposed on the awarding body under section 55F(7)(f) ought to be varied,

then, subject to the provisions of this section, the powers specified in subsection (2) may be exercised by the Authority.

(2) The powers referred to in subsection (1) are—

(a) to delete from the list of awarding bodies the name, whether by way of a whole deletion or, as the Authority considers appropriate, by way of a partial deletion, of the awarding body concerned, or

(b) to vary the conditions for the time being imposed on the awarding body concerned under section 55F(7)(f).

(3) The grounds referred to in subsection (1) are—

(a) having regard to the policies and criteria established under section 55E(1)(a), it is appropriate that the name of the awarding body concerned no longer stand included, whether by way of a whole deletion or by way of a partial deletion, in the list of awarding bodies or that, as respects the conditions for the time being imposed on the awarding body concerned under section 55F(7)(f), those conditions ought to be varied,

(b) the awarding body concerned has failed to comply with one or more of the conditions imposed on it under section 55F(7)(f), or

(c) other circumstances exist in respect of the awarding body concerned that the Authority considers provide a reasonable justification for the exercise by it of either of the powers specified in subsection (2) in relation to that body,

and this section shall be construed so that the existence of the ground specified in paragraph (b), as with that specified in paragraph (a) or (c), enables the exercise by the Authority of either of the powers specified in subsection (2) in relation to the body concerned.

(4) If the Authority proposes to exercise either of the powers specified in subsection (2) in relation to a listed awarding body, the Authority shall, by notice in writing, inform the awarding body that the Authority proposes to delete from the list of awarding bodies its name, whether by way of a whole deletion or by way of a partial deletion and, in the case of the latter, specifying the awards to which it is proposed the deletion will apply, or, as the case may be, to vary, in specified respects, the conditions that stand imposed on it under section 55F(7)(f), and the notice shall state the reasons for the proposed course of action and be accompanied by a copy of the report prepared under section 55G(5).

(5) A notice under subsection (4) shall state that the awarding body may submit observations in writing to the Authority in relation to the

proposed course of action specified in the notice or in relation to the report that accompanies the notice, not later than one month from the service of the notice on the awarding body, and the awarding body may submit such observations accordingly.

(6) Where after consideration of any observations submitted to it in accordance with subsection (5)—

(a) the Authority is still of the opinion referred to in subsection (1)(a) or (b), it may, by notice in writing addressed to the awarding body—

(i) delete from the list of awarding bodies the awarding body's name, whether by way of a whole deletion or, as the case may be, by way of a partial deletion (being the partial deletion as notified to that body under subsection (4)), or

(ii) vary, in particular respects, the conditions that stand imposed on the awarding body under section 55F(7)(f),

or

(b) in a case in which the original opinion was that referred to in subsection (1)(a) and the Authority is now of the opinion that the awarding body's name should be deleted from the list of awarding bodies by way of—

(i) a partial deletion (rather than by way of a whole deletion), or

(ii) a partial deletion as respects a lesser number of awards than had been notified to that body under subsection (4),

it may, by notice in writing addressed to the awarding body, delete from that list the body's name by way of a partial deletion consonant with what is described in subparagraph (i) or, as the case may be, subparagraph (ii),

and that deletion (of whatever kind) or variation shall be expressed to take effect from such date (not being earlier than the date of service of the notice) as the Authority considers appropriate and specifies in the notice.

(7) A notice under subsection (6) shall state the reasons for the deletion or variation referred to in that subsection.

(8) After consideration of any observations submitted to it in accordance with subsection (5), the Authority may make any amendments to the report prepared under section 55G(5) that the Authority considers appropriate. If such amendments are made to it, a copy of the report, as so amended, shall be provided by the Authority to the awarding body concerned.

- (9) The Authority shall publish the report prepared under section 55G(5), or, if it has been amended under subsection (8), the report as amended under that subsection, in such form and manner as the Authority thinks appropriate (including on the internet).
- (10) The awarding body concerned may appeal to the Appeals Board against the deletion, under this section, of its name (whether by way of a whole deletion or by way of a partial deletion) from the list of awarding bodies or the variation, under this section, of the conditions that stand imposed on it under section 55F(7)(f).

**Effect of deletion of awarding body's name from list**

- 55I.** (1) Notwithstanding the fact of an affirmative decision having been made under section 55D in respect of the award concerned, if the name of an awarding body is deleted, under section 55H(6), (in whatever of the ways there provided) from the list of awarding bodies, any award of that body made after that deletion shall, for the purposes of this Act, not be regarded as an award that is included within the Framework, but this is subject to subsections (2) and (3).
- (2) If the name of the awarding body concerned has been deleted, under subsection (6) of section 55H, by way of what is referred to in that subsection (in whatever provision of it) as a 'partial deletion', then subsection (1) shall not have effect in relation to any award as respects which that partial deletion does not apply.
  - (3) Without prejudice to subsection (2), if an award is made by an awarding body, after the deletion of its name as referred to in subsection (1), to a person whose enrolment on the programme of education and training that led to the making of the award occurred before the foregoing deletion, then that award, with respect to that person, shall be regarded, for the purposes of this Act, as an award that is included within the Framework.”.

**Amendment of section 57 of Principal Act (Review by Authority of implementation of procedures for access, transfer and progression)**

- 24.** Section 57 of the Principal Act is amended by the insertion of the following subsection after subsection (3):

“(3A) The Authority shall consult with Solas in carrying out a review under subsection (1) where—

- (a) that review relates to a relevant provider, and
- (b) that relevant provider is an education and training board or other body engaged in the provision of further education and training programmes, to whom moneys have been advanced under section 21 of the Further Education and Training Act 2013.”.

**Amendment of section 60 of Principal Act (Code of Practice for provision of programme to international learners)**

25. Section 60 of the Principal Act is amended—

(a) by the substitution of the following subsections for subsection (1):

“(1) The Authority shall, as soon as practicable after the commencement of *section 25* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*, establish and publish a code of practice to be complied with by providers (other than associated providers) of programmes of education and training to—

(a) international learners in the State enrolled on—

(i) programmes leading to awards that are awards included within the Framework made by:

(I) the Authority;

(II) a provider to whom the authority to make an award has been delegated under section 53;

(III) a designated awarding body; or

(IV) a listed awarding body,

or

(ii) English language programmes,

or

(b) learners outside the State enrolled on programmes leading to awards that are awards included within the Framework made by the Authority or a body or provider referred to in paragraph (a)(i)(II) or (III),

for the purposes, in either case, of obtaining authorisation from the Authority to use the international education mark under section 61.

(1A) The Authority may establish and publish under subsection (1)—

(a) different codes of practice for different relevant or linked providers, or groups of relevant or linked providers,

(b) different codes of practice for different classes of programmes or different types of provision.”,

(b) by the substitution of the following subsection for subsection (2):

“(2) Before establishing a code of practice under subsection (1), the Authority shall consult with An tÚdarás um Ard-Oideachas and such providers and other bodies as the Authority considers appropriate.”,

(c) in subsection (6)—

- (i) in paragraph (b), by the deletion of “and”,
- (ii) in paragraph (c), by the substitution of “provider, and” for “provider.”, and
- (iii) by the insertion of the following paragraph after paragraph (c):

“(d) the establishment of policies and procedures in writing by a provider for the purposes of the management of human resources, including policies and procedures for the recruitment, training, continuing professional development, employment and cessation of employment of education and teaching staff.”,

and

- (d) by the substitution of the following subsection for subsection (7):

“(7) In specifying, under subsection (6), requirements relating to the matters referred to in paragraph (d) of that subsection, the Authority shall consult, in such manner as it thinks fit, with such person or persons, who represent education and training staff of providers, as it considers appropriate.”.

**Amendment of section 61 of Principal Act (International education mark)**

**26.** Section 61 of the Principal Act is amended:

- (a) by the insertion of the following subsection after subsection (1):

“(1A) The Authority may specify variant forms of the international education mark for different groups of providers or classes of programmes, including an international education mark for English language education and training.”,

- (b) by the substitution of the following subsection for subsection (3):

“(3) Subject to subsection (5), a provider (other than an associated provider) may apply to the Authority for authorisation to use the international education mark:

- (a) if all programmes offered by the provider to international learners lead to one or more awards that are awards included within the Framework;
- (b) in respect of each programme offered by the provider which leads to an award that is an award included within the Framework; or
- (c) in respect of English language programmes.”,

- (c) by the substitution of the following subsection for subsection (5):

“(5) A provider shall not make an application under subsection (3) unless—

- (a) the provider has established procedures for quality assurance under section 28 that will address, in a manner that is appropriate, the

requirements under this Part for authorisation to use the international education mark, and

(b) the provider has established procedures for access, transfer and progression under section 56.”,

(d) in subsection (6)—

(i) by the substitution in paragraph (a) of “sections 30, 31, 34, 35 and 36” for “sections 30 and 31”, and

(ii) by the substitution of the following paragraph for paragraph (b):

“(b) for the purposes of complying with subsection (5)(b), establish procedures for access, transfer and progression under section 56 as if the provider was a relevant provider and sections 57, 58 and 59 shall apply as if the provider was a relevant provider.”,

(e) by the substitution of the following subsection for subsection (7):

“(7) The Authority shall determine an application under subsection (3) by assessing—

(a) the compliance of the provider with the code of practice, and

(b) other than in the case of a previously established university or a linked provider, the suitability of the provider’s quality assurance procedures having regard to the fact that, should its application be granted, the provider will be authorised to use the international education mark,

and following upon such assessment, the Authority shall:

(i) subject to subsection (8), authorise the use by the provider of the international education mark where it is satisfied that the provider is in compliance with that code and, in a case to which paragraph (b) applies, that its quality assurance procedures are suitable having regard to the fact referred to in that paragraph; or

(ii) refuse to authorise the use by the provider of the international education mark giving reasons for the refusal,

and shall notify the provider in writing of its decision.”,

and

(f) in subsection (9)—

(i) in paragraph (a), by the substitution of “mark,” for “mark, and”,

(ii) in paragraph (b), by the substitution of “mark, and” for “mark.”, and

(iii) by the insertion of the following paragraph after paragraph (b):

“(c) comply with section 65(1).”.

**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)**

27. Section 63 of the Principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (b), by the substitution of “section 61,” for “section 61.,” and

(ii) by the insertion of the following after paragraph (b):

“and, in carrying out such a review, the Authority where, in its discretion, having regard to all the circumstances of the matter, the taking of such steps is considered by it to be appropriate, may take steps to ascertain whether a failure of the kind, in the particular respect there referred to, specified in subsection (4) has occurred on the part of the provider to comply with an enactment or an instrument under an enactment.”,

(b) in subsection (2), by the substitution of “English language programmes” for “programmes of education and training in English as a foreign language”,

(c) in subsection (4)—

(i) in paragraph (a), by the deletion of “or”, and

(ii) by the insertion of the following paragraphs after paragraph (b):

“(c) a provider has failed to comply with an enactment or instrument referred to in section 29B(2)(c) where such failure is in a respect which the Authority considers could be said to affect adversely the standing of the international education mark, or

(d) a provider has failed to comply with any other enactment or instrument under an enactment where such failure is in a respect which the Authority considers could be said to affect adversely the standing of the international education mark among those seeking to receive education and training in the sector concerned,”

and

(d) by the insertion of the following subsection after subsection (7):

“(7A) A provider may give notice in writing to the Authority that it no longer wishes to have authorisation to use the international education mark; on receipt of such a notice, the Authority may withdraw the provider's authorisation to use that mark, without the need for a review, by notice in writing addressed to the provider.”.

**Amendment of section 64 of Principal Act (Interpretation)**

28. The Principal Act is amended by the substitution of the following section for section 64:

**“Interpretation and application of Part****64.** (1) This Part applies to—

- (a) subject to paragraph (b), programmes of education and training of 3 months or longer duration, and
- (b) English language programmes.

(2) In this Part—

‘annual charge’ shall be construed in accordance with section 65(1);

‘Learner Protection Fund’ shall be construed in accordance with section 66(1);

‘protected programme default event’ means, in relation to a programme of education and training offered by a provider—

- (a) that will lead to an award that is an award included within the Framework, or
- (b) that is an English language programme,

and (in either case) in respect of which programme the provider has accepted moneys from or on behalf of learners, the occurrence of the following circumstances namely—

- (i) the provider does not provide the programme for any reason, including by reason of the insolvency or winding up of the provider, or
- (ii) enrolled learners have begun but not completed the programme 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 the provider.

(3) Without prejudice to the generality of the definition of ‘protected programme default event’ in subsection (2) – in the case of a programme of education and training leading to an award that is an award included within the Framework – a provider shall, for the purposes of that definition, be taken to have ceased to provide that programme if—

- (a) the Authority withdraws validation of that programme, or
- (b) a relevant awarding body, including an awarding body with awards included within the Framework, indicates that it is no longer willing to make that award in respect of that programme.”.

**Amendment of section 65 of Principal Act (Arrangements by providers for protection of enrolled learners)****29.** The Principal Act is amended by the substitution of the following sections for section 65:

**“Obligation of certain providers to pay annual charge into Learner Protection Fund**

65. (1) Subject to subsections (6) and (7), if—

- (a) a relevant provider, an associated provider or a linked provider (each of which is referred to subsequently in this section as an ‘obligated provider’) offers, for reward, a programme of education and training leading to an award that is an award included within the Framework, or
- (b) a provider offers, for reward, an English language programme (and such a provider is also referred to subsequently in this section as an ‘obligated provider’),

it shall, in each year, pay into the Learner Protection Fund, such amount (referred to subsequently in this Part as the ‘annual charge’) as is prescribed under section 66A(1).

- (2) Subject to subsection (3), the annual charge shall be paid into the Learner Protection Fund prior to the commencement of provision by the obligated provider of the programme concerned and prior to the acceptance by it of any payments by or on behalf of any learners for enrolment on that programme.
- (3) The Authority may, in its discretion, determine that the annual charge, to be paid into the Learner Protection Fund by a class of obligated provider specified in the determination, shall be so paid by such a provider not later than a time that is specified by the Authority in the determination, being a time that falls after either event referred to in subsection (2), and such a provider shall, accordingly, pay the annual charge into the foregoing Fund no later than the time so specified.
- (4) References in this section and subsequent provisions of this Part to the payment into the Learner Protection Fund of the annual charge shall be construed as references to the payment of that charge to the Authority for the purpose of the Authority remitting the charge to that Fund (and any such charge so paid to the Authority shall be remitted by it to that Fund accordingly).
- (5) The Authority may require an obligated provider who is liable to pay the annual charge to provide any information that is relevant to determining the amount of the charge.
- (6) Subsection (1) shall not apply to a provider of a programme of education and training if the provider is—
  - (a) a previously established university,
  - (b) an educational institution established as a university under section 9 of the Act of 1997,

- (c) a technological university,
  - (d) the Dublin Institute of Technology,
  - (e) an Institute of Technology,
  - (f) an educational institution designated under section 5 (inserted by section 52(e) of the Institutes of Technology Act 2006) of the Higher Education Authority Act 1971 as an institution of higher education for the purposes of that Act,
  - (g) Solas,
  - (h) the National Tourism Development Authority,
  - (i) Teagasc,
  - (j) An Bord Iascaigh Mhara,
  - (k) an education and training board or an institution established and maintained by an education and training board,
  - (l) the Institute of Public Administration,
  - (m) a recognised school,
  - (n) the Royal College of Surgeons in Ireland,
  - (o) the Royal Irish Academy of Music,
  - (p) Mary Immaculate College,
  - (q) Marino Institute of Education, or
  - (r) a body established—
    - (i) by or under an enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act), or
    - (ii) under the Companies Act 2014 (or a former enactment relating to companies within the meaning of section 5 of that Act) in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of money provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government.
- (7) If a provider referred to in subsection (1) ceases to provide, for reward, a programme referred to in paragraph (a) or (b) of that subsection, that subsection shall—
- (a) beginning with the year following the year in which the programme ceases to be so provided, and
  - (b) in each year thereafter,

provided there is not a resumption by the provider of the doing of the thing referred to in that subsection (whether in respect of the same programme or another programme falling within paragraph (a) or (b) of it), cease to apply to the provider.

- (8) Where an obligated provider receives moneys, more than 40 days before the commencement of the provision by it of a programme referred to in subsection (1), from or on behalf of a learner in respect of that programme, the obligated provider shall establish an account with the holder of a licence (within the meaning of the Central Bank Act 1971) into which account it shall pay those moneys, and in respect of which account the provider ensures that an arrangement in writing, entered into between it and that holder (the ‘institution’), of the kind referred to in subsection (9) applies.
- (9) The arrangement referred to in subsection (8) is that the account concerned will operate by way of escrow and with the following incidents, that is to say—
- (a) the moneys concerned may not be drawn upon by the obligated provider unless and until the institution receives a written notification from the provider which contains a statement by the provider (accompanied by proof that, in the opinion of the institution, will enable the statement to be verified by it) that the programme concerned has commenced, and
- (b) in the event of the programme not being commenced, for any reason, the institution shall permit—
- (i) unless subparagraph (ii) applies, the whole of the moneys concerned, or
- (ii) such amount of the moneys concerned as remains after deduction, in the institution’s favour, of any charges for the making of the arrangement referred to in subsection (8) that have been agreed between the obligated provider and institution,
- to be drawn upon by the learner (or another acting on the learner’s behalf), and only the learner or another so acting, by way of refund or, as the case may be, partial refund.

**Existing enrolled learner protection arrangements – status and period for which such arrangements shall continue to have effect**

**65A.** (1) In this section—

‘previous section 65’ means section 65 as it stood enacted before the relevant commencement;

‘relevant commencement’ means the date of commencement of *section 29* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*;

‘relevant substitution’ means the amendment, effected by *section 29* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*, in so far as it consists of the substitution, for the previous section 65, of a section 65.

- (2) Subject to subsection (3), any arrangements put in place under the previous section 65 by a provider (and subsisting immediately before the relevant commencement) shall, notwithstanding the relevant substitution, continue in being.
- (3) On the expiration of 3 years from the relevant commencement or such earlier date as may be appointed by order made by the Minister under subsection (4), the arrangements referred to in subsection (2) shall cease to have effect.
- (4) The Minister, after consultation with the Authority, may, by order, appoint a date (earlier than the expiration of the period of 3 years referred to in that subsection) for the purposes of subsection (3) and different such dates may be appointed by an order or orders made under this subsection by the Minister in relation to different classes of provider specified in the order or orders.”.

#### **New section 66 of Principal Act (Protection of Enrolled Learners Fund)**

**30.** The Principal Act is amended by the substitution of the following section for section 66:

##### **“Protection of Enrolled Learners Fund**

- 66.** (1) The Authority shall, in accordance with the requirements under subsection (2), establish, maintain and operate a fund which shall be known as the ‘Protection of Enrolled Learners Fund’ and is in this Act referred to as the ‘Learner Protection Fund’.
- (2) Requirements shall be prescribed by the Minister, with the consent of the Minister for Public Expenditure and Reform, in relation to the establishment, maintenance and operation of the Learner Protection Fund. Requirements so prescribed may include requirements with respect to the exercise by the Authority of the power of defrayment (from moneys standing to the credit of the Learner Protection Fund) under subsection (3)(a) and (b).
  - (3) In the case of a protected programme default event, moneys standing to the credit of the Learner Protection Fund may be used by the Authority to—
    - (a) defray the costs that will be incurred in the completion by the enrolled learner of the programme, the subject of that event (the ‘relevant programme’), where such completion is possible,

- (b) defray the payment of the fees required for the transfer of an enrolled learner onto a programme of another provider that is similar to the relevant programme,
  - (c) if the Authority concurs with a submission in writing to it made by the enrolled learner (or another acting on the learner's behalf) to the effect that compliance with paragraph (a) or (b) is not practicable in the particular case, 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 relevant programme, including, where payment in respect of such a period has been made, in respect of the current academic year.
- (4) In subsection (3)(c) 'moneys' 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 of it) in respect of enrolment on the relevant programme and which relate to the provision of education, training and related services.
- (5) Where—
- (a) a protected programme default event occurs, and
  - (b) to the extent that the steps the Authority is authorised to take under subsection (3) would not result (or, if such steps have been taken by it, have not resulted) in a similar outcome for the learner concerned,
- the Authority shall make all reasonable efforts for the purpose specified in subsection (6) to ensure that an alternative programme of education, provided by another provider, is made available to each learner enrolled on the relevant programme.
- (6) The purpose referred to in subsection (5) is to ensure that the learner may have a reasonable opportunity to complete a programme of education and training similar to that commenced with the original provider.
- (7) The Authority may, for the purposes of defrayments (from moneys standing to the credit of the Learner Protection Fund) that are referred to in subsection (3)(b), establish criteria by reference to which it shall determine whether a particular programme is a similar one to the relevant programme concerned. The Authority shall publish the criteria so established by it in such form and manner as it thinks appropriate (including on the internet).
- (8) The amount of any defrayment or refund (from moneys standing to the credit of the Learner Protection Fund) under subsection (3), in relation to a protected programme default event, may be recovered from the provider of the relevant programme by the Authority as a simple contract debt in any court of competent jurisdiction.

- (9) Any amount recovered by the Authority under subsection (8) shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (10) In addition to what is provided in the preceding subsections concerning payments from the Learner Protection Fund, the Authority—
- (a) may pay from moneys standing to the credit of the Fund such sums as it thinks appropriate to defray expenses incurred by it in the establishment, maintenance or operation of the Fund or incurred by it on the occasion of the performance by it of any other function under this Act, the performance of which, on the occasion concerned, the Authority is satisfied was, lawfully, for the purpose of the protection of enrolled learners (whether in general or in particular), and
- (b) shall pay to the Minister from moneys standing to the credit of the Fund, upon the Minister giving a direction in that behalf, such sums as the Minister considers appropriate and specifies in the direction for the purpose of repaying sums paid into the Fund under section 66A(4) (and moneys received by the Minister under this paragraph shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine).
- (11) The Authority shall not later than 31 March in each year prepare and publish, in such form and manner as it considers appropriate, a report in respect of operation of the Learner Protection Fund during the preceding year and, in particular, in respect of the exercise, during that year, by the Authority of the power of defrayment or refund (from moneys standing to the credit of that Fund) under subsection (3).
- (12) If the date of the establishment under subsection (1) of the Learner Protection Fund falls in the period from 1 October to the following 31 December, the first report under subsection (11) shall be prepared and published not later than the 31 March in the second year following the year in which that date of establishment day falls and shall relate to that last-mentioned year and the following year.
- (13) The Authority shall furnish a copy of a report under subsection (11) to the Minister and the Minister shall cause a copy of it to be laid before each House of the Oireachtas.
- (14) No information shall be included in a report under subsection (11) that could reasonably lead to the disclosure of the identity of any learner nor (in respect of a case of a refund dealt with in the report and which refund has been made to the person who paid the original moneys concerned on behalf of a learner) the identity of any other such person.

- (15) On the expiry of 5 years after the date of the establishment under subsection (1) of the Learner Protection Fund, and on every 5th anniversary thereafter, the Authority shall conduct a review of the operation of that Fund and in conducting that review shall invite, and have regard to, submissions from obligated providers in relation to that Fund's operation and the matters specified in subsection (16) relating to the annual charge.
- (16) A review under subsection (15) shall extend to the consideration by the Authority of the annual charge and the extent to which the provision made by this Part for such a charge, and the amount thereof as it stands prescribed for the time being, enable the giving of effective financial assistance to enrolled learners in the circumstances specified in this Part.
- (17) The Authority shall prepare and publish a report setting out the results of a review under subsection (15) and subsections (13) and (14) shall apply to such a report as they apply to a report under subsection (11)."

#### **Payment of annual charges into Learner Protection Fund and related matters**

31. The Principal Act is amended by the insertion of the following section after section 66 (inserted by *section 30*):

#### **“Regulations in relation to payment of annual charges into Learner Protection Fund and related matters**

- 66A.** (1) The Minister shall prescribe the amount of the annual charge to be paid, under subsection (1) of section 65, by each provider referred to in that subsection (in this section referred to as an ‘obligated provider’).
- (2) The Minister may prescribe a different amount under subsection (1) in respect of different classes of obligated providers and different classes of programmes provided by obligated providers, and a class of programme may be defined in the regulations concerned by reference to the following matters:
- (a) the number of learners enrolled on the programme;
  - (b) the number of international learners enrolled on the programme;
  - (c) the duration of the programme;
  - (d) the level of the fees charged in respect of the programme; or
  - (e) any other matter that the Minister considers to be relevant, having regard to the functions conferred on the Authority by section 66(3) and (5) and the desirability of there being an adequate amount of moneys standing to credit of the Learner Protection Fund.

- (3) In addition to the annual charge, there shall be payable by an obligated provider into the Learner Protection Fund such amount as is prescribed if the provider fails to pay into that Fund the annual charge by a date prescribed by reference to the requirement of subsection (2) or (3), as the case may be, of section 65; the reference in this subsection to the foregoing prescribed amount being payable into the Learner Protection Fund shall be construed as a reference to that amount being payable to the Authority for the purpose of the Authority remitting the amount to that Fund (and any such amount that is so payable to the Authority, and paid to it, shall be remitted by it to that Fund accordingly).
- (4) The Minister, with the consent of the Minister for Public Expenditure and Reform, may pay into the Learner Protection Fund, out of moneys provided by the Oireachtas, such sums as the Minister thinks appropriate.
- (5) Where default is made in payment of the amount of the annual charge or the amount referred to in subsection (3), the amount may be recovered from the obligated provider concerned by the Authority as a simple contract debt in any court of competent jurisdiction, and any amount recovered by the Authority under this subsection shall be remitted by it to the Learner Protection Fund.
- (6) Where a protected programme default event occurs, the provider of the programme, the subject of that event, shall notify the Authority in writing of that event within 2 working days after that event's occurrence.
- (7) The notification under subsection (6) shall include the following:
  - (a) details of the circumstances under which the provider has ceased to provide the programme;
  - (b) details of the learners enrolled on the programme;
  - (c) details of the programme that the provider has ceased to provide;
  - (d) an indication as to whether the provider intends to discharge its obligations by arranging for the learners enrolled on the programme to transfer to a similar programme provided by another provider at the expense of the provider, or the repayment of moneys most recently paid by or on behalf of the learners.
- (8) References in subsection (7) to a programme having ceased to be provided by the provider shall be deemed to include references to each of the cases referred to in subsection (3) of section 64 in which, by virtue of that subsection (3), a provider is to be taken, for the purposes of the related definition in subsection (2) of that section, to have ceased to provide a programme.

- (9) At the time the provider gives the notification under subsection (6) in relation to a protected programme default event, it shall also notify, in writing, the learners enrolled on the programme, the subject of that event, of that event.
- (10) A notification given under subsection (6) or (9) shall comply with any requirements prescribed by the Minister.
- (11) If a provider of a programme (the ‘alternative programme’) that is similar to the relevant programme referred to in paragraph (b) of section 66(3) offers a learner referred to in that paragraph (b) a place on the alternative programme, the learner may accept the offer.
- (12) Subject to subsection (13), such an acceptance by the learner shall be in writing and be made within a period of 30 days from the date of the offer, after which time the offer shall be regarded as having lapsed.
- (13) If the Authority considers that exceptional circumstances apply in a particular case, subsection (12) shall, with the assent of the provider of the alternative programme and the learner, have effect in that case with the substitution, for the period specified in that subsection, of such shorter or longer period than that period as the Authority determines.”.

**Amendment of section 67 of Principal Act (Obligation on providers to furnish information to enrolled learners)**

**32.** Section 67(1) of the Principal Act is amended, in paragraph (a)(iii):

- (a) by the substitution of “the award is one that is included within the Framework” for “the award is recognised within the Framework”, and
- (b) by the substitution of the following clause for clause (I):

“(I) the level at which the award is included within the Framework, and”.

**Amendment of section 79 of Principal Act (Database)**

**33.** (1) Section 79(1) of the Principal Act is amended by the substitution of the following paragraphs for paragraphs (a) and (b):

- “(a) awards that are awards included within the Framework,
- (b) programmes of education and training which lead to awards that are awards included within the Framework, other than post-primary schooling leading to the sitting of the Junior Certificate or Leaving Certificate examination or any examination prescribed under section 50(2) of the Education Act 1998, and”.

(2) Section 79(2) of the Principal Act is amended:

- (a) in paragraph (a)—

- (i) by the substitution of “in relation to an award that is an award included within the Framework” for “in relation to an award recognised within the Framework”, and
- (ii) by the substitution of the following subparagraphs for subparagraphs (iii) and (iv):
  - “(iii) the level at which the award is included within the Framework for the time being, and
  - (iv) the award type and class of award as identified within the Framework for the time being;”,

and

- (b) in paragraph (b)(vi)—
  - (i) by the substitution of “the programme is one that is included within the Framework” for “the programme is recognised within the Framework”,
  - (ii) in clause (I), by the substitution of “the award is included within the Framework” for “the award is recognised within the Framework”, and
  - (iii) by the substitution of the following clause for clause (II):
    - “(II) the award type and class of award as identified within the Framework for the time being;”.

#### **Amendment of section 80 of Principal Act (Fees)**

**34.** Section 80 of the Principal Act is amended:

- (a) in subsection (1)—
    - (i) by the substitution of the following paragraphs for paragraph (a):
      - “(a) a request under section 29B(4),
      - (aa) the submission of quality assurance procedures to the Authority for approval under section 30,”,
- and
- (ii) by the insertion of the following paragraphs after paragraph (j):
    - “(ja) an application under section 55C(4),
    - (jb) the benefit of a decision under section 55D,
    - (jc) the continuing benefit of a decision under section 55D,
    - (jd) a review under section 55G,”,
- and
- (b) by the substitution of the following subsection for subsection (5):

“(5) The Authority may provide for the payment of—

- (a) reduced fees, under this section, having regard to the method of payment of the fees, and
- (b) a single fee, under this section, in respect of the doing by it (or, as appropriate, the doing by another) of 2 or more things referred to in subsection (1), being a fee that is of a lower amount than the amount of the individual fees (when aggregated) that would otherwise be payable in respect of the doing of those 2 or more things.”.

**Amendment of section 84 of Principal Act (Transitional and savings provision for the Qualifications (Education and Training) Act 1999)**

**35.** Section 84 of the Principal Act is amended—

(a) in subsection (1), by the substitution of “Subject to subsections (1A) and (1B), where” for “Where”,

(b) by the insertion of the following subsections after subsection (1):

“(1A) The provision made by subsection (1) for the continuance in force of the procedures referred to in that subsection shall, in relation to the procedures subsequently mentioned in this subsection, cease to apply (and, accordingly, those procedures shall no longer be taken to be in force as if they had been established under section 28) in either—

(a) the following circumstances—

- (i) a period of 3 years from the commencement of *section 35* of the *Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019* has expired, and
- (ii) the relevant provider concerned has not, within that period, submitted a copy of the procedures to the Authority for approval under section 30,

or

(b) the following circumstances—

- (i) the relevant provider concerned has, within the foregoing period, done that which is referred to in paragraph (a)(ii), and

(ii) either—

- (I) the Authority refuses to approve under section 30 the procedures submitted to it and the period prescribed under section 70 for lodging with the Appeals Panel, in accordance with section 69, an appeal against that refusal has expired without such an appeal being so lodged, or

- (II) the Authority refuses to approve under section 30 the procedures submitted to it, an appeal against that refusal has, in accordance with section 69, been lodged with the Appeals Panel within the period so prescribed and an Appeals Board either affirms the decision of the Authority or directs it to reconsider its decision and, in the latter case, the Authority, on such reconsideration, again refuses to approve under section 30 the procedures submitted to it.
- (1B) The provisions of section 30 shall apply to a copy of procedures submitted to the Authority, as mentioned in subsection (1A), as they apply to a draft of proposed procedures referred to in subsection (1) of section 30 that is submitted to the Authority.”,
- (c) in subsection (4), by the substitution of “Subject to subsections (4A) to (4C), where” for “Where”, and
- (d) by the insertion of the following subsection after subsection (4):
- “(4A) On the making of a determination by the Authority under subsection (4B), subsection (4)(a) shall continue to have effect in relation to a programme of education and training for the period that is specified in the determination and, subject to subsections (4B) and (4C), for no longer (and, accordingly, that programme shall, subject to those subsections, no longer be taken to be validated by the Authority under section 45 on the expiry of such period).
- (4B) For the purpose of limiting, subsequent to the commencement of *section 35 of the Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019*, the continued effect of subsection (4)(a) in relation to a programme of education and training, the Authority shall, on or after that commencement, determine the period (being a period that shall be specified in the determination and expressed to begin on the making of the determination) for which subsection (4)(a) shall continue to have effect in relation to a programme of education and training, but subsection (4C) applies so as to provide that, in the circumstances specified in that subsection and in relation to the learner there referred to, a programme of education and training shall, for the purposes of this Act, be deemed to be validated notwithstanding the fact that the foregoing period has expired.
- (4C) In circumstances in which a learner—
- (a) is enrolled on a programme of education and training before the expiry of the period specified, in a determination under subsection (4B), with respect to that programme, and
- (b) completes, in accordance with its terms, that programme after that expiry,

that programme shall, in relation to that learner, be deemed to be validated for the purposes of this Act notwithstanding the expiry of the period so specified.”.

## PART 3

## MISCELLANEOUS

**Amendment of Regional Technical Colleges Act 1992**

36. Section 5 of the Regional Technical Colleges Act 1992 is amended:

(a) in subsection (1) (as amended by section 86 of the Principal Act), by the insertion of the following paragraph after paragraph (a):

“(b) to make awards, with the exception of doctoral degrees, to students where the college has satisfied itself that the students have acquired and demonstrated the appropriate standard of knowledge, skill or competence for awards that are included within the National Framework of Qualifications;”,

and

(b) by the insertion of the following subsection after subsection (1):

“(1A) Awards referred to in subsection (1)(b) may only be conferred, granted or given on the recommendation of the academic council of the college to or on persons who satisfy the academic council that they have attended or otherwise pursued or followed appropriate courses of study, instruction, research or training provided by the college, or that they have previously acquired learning in accordance with procedures established by the college under section 56 of the Qualifications and Quality Assurance (Education and Training) Act 2012, and have attained an appropriate standard in examinations or other tests of knowledge or ability or have performed other exercises in a manner regarded by the academic council of the college as being satisfactory.”.

**Authorisation to use description: “university”**

37. (1) In this section “Act of 1997” means the Universities Act 1997.

(2) Section 52 of the Act of 1997 is amended, in subsection (1) (amended by section 6 of the Education (Miscellaneous Provisions) Act 2015), by the insertion of “sections 53 to 58 and to” after “Subject to”.

(3) The Act of 1997 is amended by the insertion of the following sections after section 52:

**“Definitions for the purposes of sections 54 to 58**

**53.** In sections 54 to 58—

‘Act of 2012’ means the Qualifications and Quality Assurance (Education and Training) Act 2012;

‘authorised provider’ means an education provider in respect of which a university authorisation order is in force;

‘education provider’ means a person who provides a programme of education and training;

‘revocation order’ shall be construed in accordance with section 56(7);

‘university authorisation order’ shall be construed in accordance with section 54(3).

#### **Authorisation to education provider to describe itself as a university**

**54.** (1) An education provider, whose primary income does not derive from moneys provided by An tÚdarás (being moneys provided to An tÚdarás under section 12 of the Higher Education Authority Act 1971), may make an application to the Minister for the making of an order under subsection (3) in respect of it.

(2) Such an application shall be in such form and be accompanied by such information as the Minister may direct.

(3) Subject to the following subsections and sections 55 to 58, on an application being made under subsection (1) the Minister may decide to make, or may decide to refuse to make, an order under this subsection (in this Act referred to as a ‘university authorisation order’) that authorises the education provider to use, in respect of itself, the description ‘university’ and to style itself accordingly and where the Minister decides to make such an order, the Minister shall, subject to subsection (9), make the order accordingly.

(4) In making a decision under subsection (3), the Minister—

(a) shall consult with An tÚdarás, and

(b) may appoint an advisory panel, that may include national and international experts having a special interest in or expertise in, or knowledge of, matters relating to higher education, and may receive and have regard to advice given by that panel with respect to the education provider’s application,

and the Minister shall not make a decision to make a university authorisation order unless the Minister is satisfied that the conditions specified in section 55(1) are complied with in respect of the education provider concerned.

(5) In addition to any information provided by it pursuant to a direction under subsection (2), the education provider concerned shall provide to the Minister such information and documentation as the Minister

may specify for the purpose of considering its application under subsection (1).

- (6) The Minister shall make a decision under subsection (3) within a period of 4 months after the date of receipt of the application concerned under subsection (1).
- (7) The Minister shall notify, in writing, the education provider concerned of the Minister's decision under subsection (3) as soon as may be after the making of it and where the decision notified is a decision to refuse to make a university authorisation order, the notification shall state the reasons for the refusal.
- (8) Where the Minister makes a decision under subsection (3) to refuse to make a university authorisation order in respect of the education provider concerned, the provider may, in accordance with section 57, appeal against that decision within 30 days after the service of the notice under subsection (7).
- (9) Where a university authorisation order is proposed to be made, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.

**Conditions to be complied with for making of university authorisation order**

55. (1) The conditions referred to in section 54(4) in respect of an education provider are:
- (a) that the provider shall:
    - (i) have provided programmes of education and training and conducted examinations, leading to the awarding by it of degrees and other qualifications to at least doctoral degree level for not less than 5 years in the State prior to the date of making the application;
    - (ii) have conducted research for not less than 5 years in the State prior to the date of making the application;
    - (iii) be a designated awarding body permitted to award degrees and other qualifications to doctoral degree level in accordance with the provisions of the Act of 2012;
    - (iv) demonstrate—
      - (I) that it has integrated, coherent and effective governance structures in place concerning academic, administrative, financial and management matters,

- (II) that it has strong links with business, enterprise, the professions, the community, local interests and other stakeholders,
- (III) that it has, under section 28 of the Act of 2012, established procedures in writing for quality assurance in relation to which—
  - (A) no notice has been furnished by the Qualifications and Quality Assurance Authority of Ireland under section 36(1) of the Act of 2012, or
  - (B) approval has not been withdrawn under section 36 of that Act,
- (IV) that subject to the right and responsibility to preserve the principles of academic freedom in the conduct of its internal and external affairs, it provides, and has procedures in place to further develop, the provision of programmes that respond to the delivery of policies or objectives of the Government or the Minister as they relate to higher education and to the needs of business, enterprise, the professions, the community, local interests and other stakeholders,
- (V) that it—
  - (A) provides opportunities for staff and students to teach, learn or conduct research at institutions that provide higher education outside the State, or to obtain relevant work experience outside the State,
  - (B) provides opportunities for staff and students of institutions that provide higher education outside the State to teach, learn or conduct research at the education provider, and
  - (C) collaborates with institutions that provide higher education outside the State, including on joint research projects and for the purpose of provision of programmes,
- (VI) that it is financially viable and has sufficient financial resources available to meet any projected costs arising from the making of a university authorisation order in respect of it,
- (VII) that it develops and promotes and has procedures in place to further develop and promote strong social and cultural links, and links supporting creativity, between the education provider and the community,

- (VIII) that it contributes in so far as possible in the education and training, research, innovation and other activities it provides to the promotion of the economic, cultural, social and scientific development of the State, while fostering and respecting the diversity of its own traditions,
  - (IX) that it respects the diversity of values, beliefs and traditions in Irish society,
  - (X) that it promotes critical and free enquiry, informed intellectual discourse and public debate within the education provider and in wider society, and
  - (XI) that it promotes access to the education it provides, by economically or socially disadvantaged persons, by persons who have disability and by persons from sections of society who are significantly under-represented in its student body;
- (b) that of the students of the education provider registered (at the time of the making of the application) on programmes that lead to—
- (i) an award at honours bachelor degree level, or
  - (ii) an award at a level higher than that referred to in subparagraph (i),  
at least 4 per cent of them are research students registered on a programme which leads to an award to at least master's degree level;
- (c) that of the full-time academic staff of the education provider engaged (at the time of the making of the application) in the provision of a programme that leads to an award to at least honours bachelor degree level—
- (i) at least 90 per cent of such staff hold a master's degree or doctoral degree,
  - (ii) at least 45 per cent of such staff either—
    - (I) hold a doctoral degree, or
    - (II) subject to subparagraph (iii), hold a terminal degree and possess sufficient practical experience gained in the practice of a profession to which the programme relates, such that the degree and experience together can reasonably be viewed by the Minister (after consultation, if such a panel has been appointed under that provision, with the advisory panel referred to in section 54(4)(b)) as equivalent to a doctoral degree,

and

- (iii) not more than 10 per cent of such staff hold only the qualifications referred to in subparagraph (ii)(II);
- (d) that of the full-time academic staff of the education provider engaged (at the time of the making of the application) in both of the following activities, namely—
  - (i) the provision of a programme that leads to an award at doctoral degree level, and
  - (ii) the conduct of research,  
at least 80 per cent of such hold a doctoral degree;
- (e) that each of the full-time academic staff of the education provider engaged (at the time of the making of the application) in the supervision of students registered on a programme that leads to an award at doctoral degree level—
  - (i) either—
    - (I) holds a doctoral degree, or
    - (II) holds a terminal degree and possesses sufficient practical experience gained in the practice of a profession to which the programme relates, such that the degree and experience together can reasonably be viewed as equivalent to a doctoral degree,and
  - (ii) has a record of continued conduct of research in an area relevant to the programme;
- (f) that it provides teaching and facilitates learning that is informed by research and promotes excellence at appropriate levels of higher education within the National Framework of Qualifications and that in relation to a programme referred to in paragraph (d)—
  - (i) it conducts research and carries out innovation activity to a high standard, and
  - (ii) the research and innovation contributes to the furtherance of knowledge and has positive social and economic effects on business, enterprise, the professions, the community, local stakeholders and other related stakeholders;
- (g) that all programmes provided by the education provider that lead to an award at doctoral degree level comply with any policy relating to doctoral education as may be agreed from time to time between An tÚdarás and the Qualifications and Quality Assurance Authority of Ireland following consultation with bodies representing the interests of an institute of technology, a technological university or

a university specified in any of paragraphs (a) to (d) of section 4 (1).

(2) In subsection (1)—

‘award’ means an award that is included within the National Framework of Qualifications (within the meaning of the Act of 2012);

‘level’ means included at the level concerned within the National Framework of Qualifications.

### **Revocation of university authorisation order**

**56.** (1) References in this section to a continuing condition shall be construed in accordance with subsection (2).

(2) For the purposes of this section, each of the conditions specified in paragraph (a)(iii) and (iv) and paragraphs (b) to (g) of section 55(1) shall be regarded as a continuing condition, that is to say each such condition (with the modification, where appropriate, of it referred to in subsection (3)) shall operate as a condition that must continue to be complied with in respect of the authorised provider subsequent to the making of a university authorisation order in respect of it.

(3) For the purposes of this section, a reference in any of paragraphs (b) to (g) of section 55(1) to the time of the making of the application shall be construed as a reference to—

(a) if the power under subsection (5) has been exercised in relation to the authorised provider concerned, the time of the exercise of that power, or

(b) if a review has been conducted under this section (but the foregoing power has not been exercised in relation to the authorised provider concerned), such time during the course of the conduct of the review as An tÚdarás considers appropriate.

(4) An tÚdarás may at any time review the activities of an authorised provider for the purposes of ascertaining whether each of the continuing conditions is being complied with in respect of the provider.

(5) Where—

(a) a review under subsection (4) is being conducted, or

(b) An tÚdarás otherwise considers it appropriate to exercise the following power in relation to an authorised provider,

An tÚdarás may, by notice in writing, request the authorised provider concerned to provide to it such information, in relation to the activities of the provider, as is specified in the notice and the provider shall

provide that information to An tÚdarás within such period as is specified in the notice.

- (6) Where following a review under subsection (4), or upon consideration of information received from an authorised provider on foot of a notice under subsection (5) (served in the circumstances referred to in paragraph (b) of that subsection), An tÚdarás is of the opinion that any of the continuing conditions is not being complied with in respect of an authorised provider, it shall inform the Minister, in writing, of its opinion and the reasons for the opinion.
- (7) Subject to subsections (8) to (12), where in relation to an authorised provider—
  - (a) the Minister is informed by An tÚdarás, under subsection (5), that it is of the opinion referred to in that subsection, or
  - (b) it otherwise comes to the notice of the Minister that any of the continuing conditions is not being complied with in respect of an authorised provider,the Minister may, after consultation with An tÚdarás, make an order revoking the university authorisation order in respect of the provider (in this section referred to as a ‘revocation order’).
- (8) Where the Minister proposes to make a revocation order he or she shall, by notice in writing to the authorised provider concerned, inform the provider that he or she proposes to make such an order in respect of it and state the reasons for the proposed revocation.
- (9) A notice under subsection (8) shall state that the authorised provider may make representations to the Minister in relation to the reasons for the proposed revocation that have been stated in the notice not later than 30 days after the service of the notice on the provider.
- (10) Where, after consideration of representations (if any) made to the Minister in accordance with subsection (9), the Minister decides, for the reasons stated in the notice concerned under subsection (8), to make a revocation order in respect of the authorised provider, the Minister shall notify, in writing, the provider of that decision and of the date that the Minister proposes to specify in the order as the date on which the order shall come into operation (which date shall not be a date earlier than the end of the period within which an appeal may be brought under subsection (11)).
- (11) Where the Minister makes a decision under subsection (10) to make a revocation order in respect of the authorised provider, the authorised provider may, in accordance with section 57, appeal against that decision within 30 days after the service of the notice under subsection (10).

- (12) Unless, within the foregoing period, an appeal is made in accordance with section 57 against the decision of the Minister referred to in subsection (11), the Minister shall make the revocation order in respect of the authorised provider.

### **Appeals Board**

57. (1) This section applies to each of the following cases:

- (a) a case in which an education provider appeals against a decision of the Minister to refuse to make a university authorisation order in respect of it;
  - (b) a case in which an authorised provider appeals against a decision of the Minister to make a revocation order in respect of it.
- (2) An appeal referred to in subsection (1)(a) or (b) shall be made by notice in writing given by the education provider or the authorised provider to the Minister.
- (3) In a case to which this section applies, the Minister shall, within 7 days after the date of receipt of the notice of appeal concerned, request the Qualifications and Quality Assurance Authority of Ireland to nominate persons, as provided for under subsection (4), for appointment to an appeals board for the purposes of the appeal.
- (4) As soon as practicable, and in any event not later than 42 days after the request under subsection (3), the Qualifications and Quality Assurance Authority of Ireland shall nominate—
- (a) 2 persons having a special interest or expertise in, or knowledge of, matters relating to higher education—
    - (i) one of whom shall be nominated for the purpose of the person's being appointed the chairperson, and
    - (ii) one of whom shall be nominated for the purpose of the person's being appointed to be an ordinary member,  
of the appeals board, and
  - (b) one person who, as a practising solicitor or practising barrister, has not less than 10 years' experience as such and who shall be nominated for the purpose of the person's being appointed to be an ordinary member of the appeals board.
- (5) An employee or member of the Qualifications and Quality Assurance Authority of Ireland shall not be nominated under subsection (4)(a).
- (6) A solicitor or barrister who is in the full-time service of the State shall not be nominated under subsection (4)(b).
- (7) In a case to which this section applies, the Minister shall appoint an appeals board, consisting of a chairperson and 2 ordinary members and

the persons appointed to those positions shall be the persons nominated, respectively, for that purpose under subsection (4).

- (8) The persons so appointed shall be paid such fees and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (9) The Minister shall furnish such support of an administrative nature to an appeals board as the Minister in his or her opinion determines necessary to enable the board to perform its functions.
- (10) In relation to the appeal falling to be determined by an appeals board, the board—
  - (a) shall establish the procedures to be followed regarding the making of submissions to the board and their form, and
  - (b) may establish the procedures to be followed regarding—
    - (i) the holding of a hearing,
    - (ii) the examination by the appeals board of the parties to the appeal or other persons,
    - (iii) requests by the appeals board for information or further information, for the purposes of the appeal, from the parties to the appeal or other persons,
    - (iv) provision by the appeals board to the parties to the appeal of all information for the purposes of the appeal received by the appeals board, and
    - (v) any other matter that the appeals board considers appropriate for the proper performance of its functions.
- (11) An appeals board shall be independent in the performance of its functions.

### **Appeal**

- 58.** (1) For the purposes of the appeal for which an appeals board is appointed under section 57, the board—
- (a) shall request submissions from the parties to the appeal and the parties shall furnish the submissions to the appeals board within the period specified in the request,
  - (b) following consideration of those submissions may hold a hearing, and
  - (c) may request such information from the parties to the appeal, or any other person as the appeals board considers necessary for the proper performance of its functions, and the parties to the appeal or

other person, as the case may be, shall furnish the information to the appeals board within the period specified in the request.

- (2) If a hearing is held—
  - (a) each of the parties to the appeal is entitled to be heard at the hearing, and
  - (b) the appeals board may adjourn the hearing of a matter at any stage in the proceedings until a date specified by the board.
- (3) A decision by a majority of the members of an appeals board shall suffice for any purpose.
- (4) In considering an appeal under this section an appeals board shall consider—
  - (a) submissions from the parties to the appeal,
  - (b) the evidence presented at any hearing of the matter, and
  - (c) all information furnished to the appeals board.
- (5) On completion of its consideration of the appeal, the appeals board shall make a decision determining the appeal as soon as practicable in all the circumstances of the case, which may be a determination to—
  - (a) affirm the decision concerned of the Minister, or
  - (b) quash the decision concerned of the Minister and direct the Minister, for stated reasons, to reconsider his or her decision within a specified period.
- (6) In a case in which the subject of the appeal is a decision of the Minister to make a revocation order in respect of an authorised provider and the appeals board makes a determination under subsection (5)(a) to affirm that decision, the board shall, at the same time, specify a date that is to be the date specified in the revocation order as the date on which the order shall come into operation and the revocation order made by the Minister shall specify, as the date on which it shall come into operation, the foregoing date.
- (7) The appeals board shall notify the parties to the appeal and the Minister of its determination under subsection (5) as soon as practicable after it is made.
- (8) In the case of a determination under subsection (5)(b), the Minister shall reconsider his or her decision within the specified period or the specified period as extended for a further period by the appeals board following:
  - (a) a request from the Minister;
  - (b) consultation with the parties to the appeal; and

- (c) the board being satisfied that there is good and sufficient reason for so extending.
- (9) Where having reconsidered, on foot of a direction under subsection (5) (b), his or her decision to refuse to make a university authorisation order in respect of an education provider, the Minister decides to make a university authorisation order in respect of the provider, the Minister shall, subject to section 54(9), make the order accordingly.”.

**Construction of references in other enactments to awards recognised within Framework**

- 38.** A reference in any other Act of the Oireachtas, or an instrument made thereunder, to an award that is recognised within the National Framework of Qualifications shall be construed as a reference to an award that is an award included within that Framework (within the meaning of the Principal Act).