



STATUTORY INSTRUMENTS.

S.I. No. 427 of 2024



QUALIFICATIONS AND QUALITY ASSURANCE (EDUCATION AND
TRAINING) ACT 2012 (CAPACITY AND CAPABILITY CRITERIA)
REGULATIONS 2024

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I, PATRICK O'DONOVAN, Minister for Further and Higher Education, Research, Innovation and Science, in exercise of the powers conferred on me by section 29B (inserted by section 9 of the Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019 (No. 32 of 2019)) of the Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2012 (No. 28 of 2012) (as adapted by the Further and Higher Education, Research, Innovation and Science (Transfer of Departmental Administration and Ministerial Functions) Order 2020 (S.I. No. 451 of 2020)), hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Qualifications and Quality Assurance (Education and Training) Act 2012 (Capacity and Capability Criteria) Regulations 2024.

(2) These Regulations come into operation on 1 September 2024.

Interpretation

2. In these Regulations-

“Act” means the Qualifications and Quality Assurance (Education and Training) Act 2012, as amended;

“Authority” means the Qualifications and Quality Assurance Authority of Ireland established under the Act;

“Connected person” in relation to a provider means someone who would be considered to be a connected person under subsections (2) to (8) of section 10 of the Taxes Consolidation Act 1997;

“Employment Law” means any enactment or instrument under an enactment, including any enactment or such an instrument passed or made after the operative date, in any state imposing obligations on employers with respect to their employees or making provision in relation to any such obligations;

“holding company”, “subsidiary” and “group of companies” shall have the same meaning as they have for the purposes of the Companies Act 2014;

“programme provision” in relation to a provider means:

(1) the programmes of education and training of that provider that have been validated by the Authority pursuant to section 45 of the Act, if any;

(2) the programmes of education and training of that provider for which validation pursuant to section 45 of the Act is being sought, if any;

(3) the programmes of education and training of that provider leading to awards included within the National Framework of Qualifications;

(4) the programmes of education and training of an associated or linked provider leading to awards included within the National Framework of Qualifications; and

(5) the English language programmes in respect of which the use of the International Education Mark is authorised and the English language programmes in respect of which authorisation to use the International Education Mark is sought;

“quality assurance procedures” in relation to a provider means:

(1) the quality assurance procedures of that provider that have been approved by the Authority pursuant to section 30 of the Act, or

(2) the quality assurance procedures of that provider for which approval pursuant to section 30 of the Act is being sought; or

(3) in the case of a provider authorised to use, or applying for authorisation to use, the International Education Mark, the quality assurance procedures of that provider established under section 28 of the Act; or

(4) the quality assurance procedures of that provider established under any provision of the Act.

Application

3. These Regulations specify the criteria that will afford a reasonable assurance to the Authority that a specified provider has the capacity and capability to implement quality assurance procedures and to provide programmes of education and training consistent with the requirements of the Act (“the relevant criteria”).

Relevant Criteria

4. The following are the relevant criteria that a specified provider, other than a provider referred to in section 65(6) of the Act, must demonstrate that it meets:

(1) The specified provider is constituted and governed in a manner that ensures it is capable of implementing its quality assurance procedures and providing its programme provision on a sustainable basis, having regard in particular to the following characteristics:

- (a) The structure of the business of the provider, and its legal form;
- (b) If the provider is a member of a group of companies, or a holding company or a subsidiary company, the group corporate structure;
- (c) If the provider is a company, compliance with its obligations under the Companies Act 2014, or, if it is established outside the State, its compliance with equivalent corporate legislation;

- (d) If the provider is a member of a corporate group, compliance of the group companies with their obligations under the Companies Act 2014, or if they are established outside the State, their compliance with equivalent corporate legislation;
- (e) If the provider is a body politic, corporate or collegial, compliance with the relevant governing legislation;
- (f) The governance policy or policy framework of the provider;
- (g) The institutional governance policy framework of the provider relevant to its education and training activities; and
- (h) Where a connected person of the provider provides services to the provider or to its learners, the identity of the connected person and the nature and value of the services provided.

(2) The specified provider has adopted and applies management and control structures and policies which will ensure it is capable of implementing its quality assurance procedures and maintaining the quality of its programme provision, having regard in particular to the following management characteristics:

- (a) The management structure, or proposed management structure, of the provider;
- (b) The expertise and experience of the provider's management team;
- (c) The provider's strategic management plan; and
- (d) The provider's risk management plan.

(3) The specified provider has sufficient human resources available to it to ensure that it has the capacity to implement its quality assurance procedures and provide its programme provision in a manner consistent with the requirements of the Act, having regard in particular to the following human resource characteristics:

- (a) The provider's human resource policy;
- (b) The workload model for all educational staff;
- (c) The human resources of the provider involved directly or indirectly with its programme provision, including the number of contracted staff, the nature of their contracts, their relevant educational qualifications, their experience, and their expertise;
- (d) The nature and extent of staff employment contracts, including the ratio of permanent to temporary contracts, full-time to part-time contracts, employment to services contracts, and the nature and extent of the obligations in those contracts;
- (e) Projected staff numbers, staff costs and change to staff costs for the duration of programme provision; and
- (f) Staff turnover and continuity.

(4) The following persons are fit and proper persons to provide programmes of education and training:

- (a) In the case of a provider which is a natural person, the provider;

- (b) In the case of a provider which is a body corporate, every director of the body corporate;
- (c) In the case of a provider which is a body corporate managed and controlled by its members, every member of the body corporate;
- (d) In the case of a provider which is a partnership, every general partner;
- (e) In the case of a provider which is an unincorporated body of persons, every person on its board of management or equivalent governing body; and
- (f) In every case, any person employed by, or engaged to provide services to, the provider whose duties include making decisions that, to a significant extent, could affect the management of the provider.

(5) The specified provider has adopted a business plan, to include a business continuity plan which, if implemented, will provide for implementation of its quality assurance procedures and delivery of its programme provision on a sustainable basis, having regard in particular to the following characteristics of the business plan:

- (a) The adequacy and credibility of the business plan in the context of the provider's financial, physical and human resources;
- (b) The sustainability of the business development plan;
- (c) The proposed investment in education delivery, staff development and student support;
- (d) Financial projections;
- (e) The cash-flow projections for the duration of programme provision; and
- (f) The adequacy, credibility and sustainability of the business continuity plan.

(6) The specified provider has available to it sufficient accommodation and facilities to ensure that it is capable of providing its programme provision in a manner consistent with the requirements of the Act, having regard in particular to the following matters:

- (a) The extent and nature of the provider's premises and facilities to be used for programme provision;
- (b) The extent and nature of the provider's research, technical and administrative facilities; and
- (c) The legal interest of the provider in its premises for the duration of its programme provision.

(7) The specified provider is solvent, financially viable, and has sufficient financial resources at its disposal to sustainably provide its programme provision and implement its quality assurance procedures, having regard in particular to the following financial characteristics of the provider in the three years prior to review:

- (a) Assets and liabilities;
- (b) Sources of funding;
- (c) Revenue;
- (d) Profit or loss
- (e) Operating profit margin;
- (f) Liquidity;
- (g) Total liabilities to tangible assets;
- (h) Debt service coverage;
- (i) Operating cash flow ratio;
- (j) Change in revenue;
- (k) Asset replacement;
- (l) Year on year change in enrolments;
- (m) Year on year change in staff costs;
- (n) Year on year change in staff numbers;
- (o) Year on year change in cost of learner supports; and
- (p) Combined revenue streams.

(8) The specified provider has adopted and applies sustainable financial structures and controls, having regard in particular to the following financial structures and controls of the provider:

- (a) The financial management strategy and associated policies;
- (b) Internal audit reports;
- (c) The availability of financial management and reporting resources;
- (d) the management of accounts provided for in section 65(8) of the Act; and
- (e) The availability of relevant software, expertise, and human resources for the management of financial resources.

(9) The specified provider maintains accurate and detailed books, records, accounts and financial statements.

(10) The specified provider's tax affairs, in the State and in any other state in which it operates, are in order.

(11) The specified provider is compliant with its Employment Law obligations, having regard in particular to the following employment matters:

- (a) The provider's contractual relations with its employees, contractors, and agents;
- (b) Any adverse decisions in relation to employment law against the provider in a court, tribunal, or commission; and
- (c) Any ongoing proceedings in relation to employment law in a court, tribunal, or commission involving the provider.

(12) The specified provider is compliant with its obligations under the General Data Protection Regulation (GDPR) and related data protection legislation, having regard in particular to the following data protection matters;

- (a) The suitability and efficacy of the provider's Data Protection Policy;
- (b) The identity, qualifications, expertise and experience of the provider's Data Protection Officer;
- (c) The suitability and efficacy of all relevant policies and agreements in relation to the retention and processing of personal data by or on behalf of the provider;
- (d) The suitability and efficacy of all relevant policies and agreements in relation to third parties to whom data is or may be transferred by the provider;
- (e) The security of the provider's Information Technology network;
- (f) Any adverse decisions in relation to data protection against the provider in a court, tribunal, or commission; and
- (g) Any ongoing proceedings or complaints in relation to data protection in a court, tribunal, or commission involving the provider.

(13) In determining whether the specified provider has demonstrated that the persons specified in in Regulation 4(4) comply with the criterion specified in Regulation 4(4), the Authority shall have regard in particular to the following matters in relation to those persons:

- (a) Any convictions or judgments registered against the person, and if so, their nature and gravity, and the time elapsed since the conviction or judgment;
- (b) Whether the person is currently the subject of criminal proceedings before a court;
- (c) Whether the person has been the subject of any adverse findings in a court, tribunal, or commission in relation to Employment Law or in relation to the Equality Status Acts 2000-2018 or the equivalent legislation in another state;
- (d) Whether the person has been declared bankrupt or insolvent, or entered into an insolvency arrangement with one or more creditors;
- (e) In the case of a provider which is a natural person, that person's legal right to reside in and to work in the State;
- (f) Whether the person has previously been found not to be a fit and proper person for any other statutory purpose;
- (g) Whether the person has been restricted or disqualified from managing a company or acting as a company director;

- (h) Whether the person, or any person engaged to act for or on behalf of the person, has engaged in conduct that reasonably suggests a pattern of acting inconsistently with the laws of the State;
- (i) Whether the person has outstanding debts to the Authority;
- (j) Whether the person's approval to provide education and training programmes in any state has ever been cancelled, revoked, shortened, restricted, not renewed, or suspended; and
- (k) Whether the person provided false or misleading information to the Authority, where it is reasonable to assume that the person knew that the information was false or misleading.



GIVEN under my Official Seal,
28 August, 2024.

PATRICK O'DONOVAN,
Minister for Further and Higher Education, Research,
Innovation and Science.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations specify the criteria that, if met, will afford a reasonable assurance to Quality and Qualifications Ireland that a specified provider has the capacity and capability to implement quality assurance procedures and to provide programmes of education and training consistent with the requirements of the Qualifications and Quality Assurance (Education and Training) Act 2012.

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