

## **Presentation to 6<sup>th</sup> HEA Looking Forward Forum - Private Providers: What role should they play in the Irish higher education landscape?**

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### ***Regulation of Private Higher Education in Ireland***

#### **HISTORY**

The issue of the regulation of private colleges in Ireland first surfaced in the 1992 Green Paper on Education which noted that

*‘there has been a major growth in recent years in the number of private colleges and institutions offering education and training courses of varying duration at a variety of levels, including third level. Concern has been expressed that such colleges are not regulated in the interest of consumer protection. Such registration would provide a stamp of approval for those colleges obtaining registration and the publicity related to the registration process would alert the public to the need to reassure themselves as to the quality of courses on offer’*

The Green Paper goes on to describe the arrangements that were agreed with the then National Council for Educational Awards (NCEA) in relation to the designation of such colleges and the validation and certification of their programmes. The Green Paper also described how the Department of Education would agree a code of quality control for non-third Level colleges including where the qualifications were awarded by fully recognised institutions abroad. The objective was to ensure that certification could only take place if a college held a licence from the to be Council for Education and Vocational Awards (CEVA), in accordance with the code of quality control.

The subsequent 1995 White Paper *‘Charting Our Education Future’* described the designation of a number of private commercial colleges by NCEA. It further noted that *‘some of the designated colleges had chosen to have courses validated by agencies outside the State rather than the NCEA’* and that there were currently *‘no arrangements to ensure consistency and rigour in the appraisal and evaluation of the quality of these courses’*.

The White Paper goes on to describe the approaches that would be adopted for rigorous evaluation of the quality of courses, for the *‘satisfactory recoupment of students’ investment in the event of the institution’s commercial failure’*. The White Paper further described the requirement to make available all relevant statistical information to the Department of

Education and the NCEA. Arrangements would also be provided for the regular evaluation of the quality and standards in recognised institutions, as a condition of continuing approval and that approved courses in such designated institutions would be eligible for tax relief on fees from 1996 onwards.

The legislative provisions flowing from the 1995 White Paper included the Qualifications Act of 1999 that established the Further and Higher Education and Training Councils (FETAC and HETAC) and introduced the protection for enrolled learners' provisions and provided for the approval and review of quality assurance procedures and the validation of programmes of education and training.

The 1997 Universities Act had already provided for the concept of quality assurance and review in the university sector.

### **CLASSES OF HIGHER EDUCATION PROVIDERS IN IRELAND**

There are several types of bodies in Ireland offering Higher Education programmes.

These include the so-called designated awarding bodies, the universities (including the National University of Ireland), Dublin Institute of Technology and the Royal College of Surgeons in Ireland. These bodies have self-awarding powers, up to doctoral level.

There are the 13 Institutes of Technology, who make awards under delegated authority from QQI, for all awards up to level 9 in the National Framework of Qualifications. Many of the Institutes also have delegated authority at Doctoral level in specified fields.

There are also other bodies, termed 'linked providers'. These are bodies that do not have awarding powers in their own right, but have their programmes validated by a designated awarding body such as a university and where the students receive university awards.

These include all (until recently) of the initial teacher education providers like Mary Immaculate College and Marino Institute of Education that receives their awards from the University of Limerick and Trinity College Dublin respectively.

Other linked providers include the Institute of Public Administration, the Irish Management Institute, the Institute of Bankers and the Royal Irish Academy of Music.

There are also a number of other smaller providers who receive their awards from the universities.

In all of the above cases, the qualification can be said to be 'regulated' and the award is included in the National Framework of Qualifications. The linked provider is also regulated by the awarding body.

The inclusion of the term 'linked provider' in the 2012 Act establishing QQI was meant to close the lacuna whereby the quality assurance provisions of the 1997 Universities Act had really envisioned the idea of the university quality assuring its Departments, Schools and Faculties, and Services on a 'campus' basis. The Act was silent on how it treated bodies like the teacher education colleges, which had no specific explicit legislative provision attached to them, in terms of quality assurance.

The institutes of technology were quality assured by the Higher Education and Training Awards Council (HETAC) based on the provision of the 1999 Qualifications Act. HETAC validated the programmes of the IoTs and certified the graduating students. Over the course of the early 2000s, all of the Institutes received delegated authority to make their own awards, some up to level 10 in the NFQ.

HETAC also, of course, validated programmes for providers other than the institutes of technology. Many of these providers are also publicly-funded bodies such as the Garda and Military colleges, for instance.

HETAC also engaged with many other private or independent colleges. These include familiar names like the National College of Ireland, Griffith College, Hibernia College and Dublin Business School.

To give an idea of the size of the regulated private sector in Ireland, it is worth noting that there were over 30,600 Level 8 Major awards (Honours Bachelor Degrees or Higher Diplomas) made by the Institutes of Technology, Colleges and Universities combined in 2014.

In 2014, QQI made close to 3,200 Major awards at Level 8 in the NFQ so close to 10% of the total.

The process by which a provider becomes eligible for access to QQI awards is termed initial access. This is a voluntary procedure as Ireland does not operate a licensing system for education and training providers.

Currently, Ireland protects university title in law. The term 'institute of technology' is also protected in law but there is no restriction on institutions calling themselves 'colleges of technology' or 'international college'. No organisation established post-1997 can use the term 'university' without Ministerial permission. A quick search of the Companies Registration Office website reveals defunct companies such as the Catholic University of Mayo in Ballina and the even-more geographically-challenged Dublin Metropolitan University based in Drumcliffe, Co. Sligo.

The legislative decision to restrict university title in Ireland dates back to 1997. There is a mechanism under Section 9 of the Universities Act for a higher education institution to be evaluated for university title but it has never been successfully pursued. Indeed, there is no clear steer in the 1997 legislation as to what a university is. The Port report commissioned by the Minister for Education in 2007 as to whether Waterford Institute of Technology was in a position to make a Section 9 applications found that

*'a complicating factor in assessing WIT's application is that there is no unambiguous and transparent set of criteria against which (an assessor), or WIT, or any other body can test this application'.*

and furthermore noted that:

*‘the profile of WIT would not look out of place in a university in the UK. However, the question the Government needs to ask is “would it look out of place in Ireland”, which is a different country with a different policy and tradition from that in the UK.’*

The 2011 Hunt Report that is the National Strategy for Higher Education to 2030 clearly came down against establishing any new universities alongside the current ones through the Section 9 route but came down on balance with a recommendation of permitting the Institutes of Technology to pursue the status of technological university.

Unlike the 1997 Act, however, the Technological University Bill that was introduced by the last government had a clear definition of the bar that is required to be achieved for technological university designation in terms of matters like minimum staff qualifications and broad fields of offering. That Bill obviously fell with the last administration and the legislation has yet to be revived by the current government.

The current strategy for University-title is sustainable in a purely nationally-regulated system but would come under strain if overseas providers, particularly those from the UK, sought to establish in Ireland.

Under the 1992 universities legislation in the UK, the former polytechnics were granted both full degree-awarding powers and university title. Ireland’s approach has been more cautious whereby state-regulated higher education institutions receiving QQI awards can be assessed for and granted delegated authority to make their own awards but there is currently no process available to receive full degree awarding powers other than pursuing the Section 9 route or through the putative Technological University route which requires further legislation.

Under the 1999 legislation that established the Higher Education and Training Award Council (HETAC), the only higher education institutions that were eligible for such delegated authority were the Institutes of Technology and indeed, all of them have now received delegated authority from HETAC, now QQI, up to level 9 (Masters level) and a number have delegated authority at Level 10 (Doctoral level) in specified fields. The 2012 legislation establishing QQI offers the possibility of other higher education institutions, including those in the private sector to be able to pursue delegated authority to make their own awards but only under regulations specified by the Minister. These regulations have not, as yet, been made but the criteria are envisioned in the legislation as requiring any such institutions to have established a track record with QQI for offering a number of awards for a period of time.

QQI is currently consulting on a white paper for Delegated Authority to update the previous HETAC policy in the light of the 2012 legislation and the feedback indicates that there is some appetite from private higher education institutions to pursue such a route. The submissions to the Delegated Authority paper and the analysis of this feedback are published and are available on the QQI website.

## **DEVELOPMENTS IN THE UNIKED KINGDOM (OR ENGLAND, really)**

The growth of private higher education in the UK (or, in reality, England) has been facilitated by the changes in funding for higher education whereby the introduction of progressively higher student contributions with a fee cap that recently moved from £3,000 to £9,000 with almost all providers charging the maximum fee. This means that the former public or publicly-supported system has essentially moved over to a private or student-supported system. Undergraduate education (with the exception of some high-cost fields in STEM areas) is almost entirely supported from student fees in the form of income contingent loans. Access to such loans is based on the higher education provider being deemed eligible for such loans. Legislation currently being debated by the Westminster parliament is looking at the abolition of the Higher Education Funding Council for England (HEFCE) and its replacement by an Office for Students (OfS). Eligibility for recruiting loan-approved students will initially be based on providers having a current clean bill of health from the Quality Assurance Agency for Higher Education (QAA). Thereafter, if a University wishes to increase its fees, it will only be permitted to do so, on the basis of participating in the newly-established Teaching Excellence Framework (TEF). The ability to vary fees upwards will be determined by the receipt of a Gold, Silver or Bronze award.

These changes in the UK may have implications for Ireland and even more so post-Brexit.

Currently, there is no necessity or even incentive for UK universities to establish themselves in Ireland. A number of UK universities validate programmes and make awards for some private higher education providers in Ireland but in these cases the university is not established here.

Under the 1997 Act, UK or other foreign universities would not be permitted to establish themselves in Ireland with the title 'university' without Ministerial permission. So, currently for instance, the Irish American University has to style itself American College Dublin in respect of its QQI award offerings.

There is no internationally-accepted definition of the term 'University'. In the UK, the title is currently restricted based on a minimum of 1,000 students and a minimum breadth of higher education programmes offering. Full degree awarding powers up to doctoral level are restricted to universities. The Higher Education and Research Bill currently going through parliament proposes to lift the restriction on size and amend the breadth of programme portfolio offering.

The attitude of UK universities to establishing branches or overseas campuses in Ireland may be coloured by Brexit and the current political environment in the UK in relation to overseas students, where these students are currently included in the immigration figures.

Controlling immigration has come through as the single biggest issue in the Brexit vote and the current UK Prime Minister adopted a much tougher line on student visas than her predecessors when she was Home Secretary.

Even prior to Brexit, QQI had received some queries from some UK universities thinking of establishing branch campuses in Ireland with an overt declaration that the market for

students was predominantly (probably exclusively) visa-required students. These were not pursued further when it was explained to these institutions that they would not have an automatic right to use their 'university' title and that the student immigration regime in Ireland has also recently been strengthened.

Almost all of the UK universities that validate programmes in Ireland come from the former polytechnic stable. Should they choose to operate in Ireland, they would have an expectation to be able to use their university title. However, it is likely that this would be opposed by other non-university institutions in Ireland on understandable grounds. As there is no universal definition or bar set for university title, the institutes of technology would reasonably make the claim that were they operating in the UK, they would have university title and this would also be the case in many other countries in Europe and in North America.

The incentive for any new higher education institutions to establish in Ireland is certain to be strongly influenced any changes in the funding model and the student support system in particular that may arise from the recommendation in the Cassells Report. Current, only students attending so-called public institutions such as the universities, institutes of technology and the teacher education colleges are in receipt of the 'free-fees' (free for students, that is. It's €3,000, if you're a parent!). Students attending private colleges, including those offering QQI awards, are required to pay the full-fee, although the top-up portion is eligible for tax-relief.

Also, eligibility for student grants through SUSI is restricted to the 'free-fee' programmes. Students pursuing QQI-validated programmes in private colleges are non currently eligible for SUSI grants. This anomaly was the subject of discussion at an Oireachtas Committee meeting earlier this year.

Under the funding options outlined in the Cassells report, particularly if an income-contingent loan system is put in place, the programmes that are eligible for access to such loans will have to be clearly defined.

Of course, there are other options for funding outlined in the Cassells report and these were recently debated at the recent Joint Oireachtas Education Committee meeting. But, it is important to consider the possible effects on the provider landscape prior to any decision on the future funding model.

Any change to the current funding model will most likely impact on the private higher education sector already existing in Ireland and may also affect the attractiveness of new providers setting up in Ireland, and UK universities in particular.

## **REGULATION OF UK HIGHER EDUCATION**

It is useful to look at how UK universities are regulated and how this impacts on their transnational provision, in particular. Awarding powers are currently the preserve of the

Privy Council and new providers currently receive degree awarding powers following a positive evaluation from the quality assurance agency QAA.

Bodies that can award their own degrees are termed 'recognised bodies'. In addition, there are other higher education institutions, without their own degree-awarding powers, that are able to have their programmes validated by recognised bodies such as universities. These are called 'listed bodies' and are similar to Ireland's linked providers. Similar but not the same. The 'listed bodies' are limited to the territorial borders of the UK. There is no such list for bodies operating elsewhere, including in Ireland.

UK universities are, like Irish universities, able to exercise their degree awarding powers overseas but such so-called transnational education is not explicitly regulated by primary legislation.

The primary tool for regulating quality in UK Higher education is the Further and Higher Education Act 1992 whereby the funding councils such as HEFCE have to ensure that quality is being maintained. From 1992 up to earlier this year, this was contracted by HEFCE and the other funding councils in Scotland and Wales and the Department of Learning in Northern Ireland, to the Quality Assurance Agency QAA, who evaluated the universities on a periodic basis to ensure that, among other things, they complied with the QAA Quality Code to remain eligible for continued funding.

Part of the quality code includes the area of collaborative provision, including any transnational education. The quality assurance regime changed earlier this year when HEFCE tendered, for the first time, for bodies to contract the quality function. In the end, QAA won the tenders for 5 of the 6 lots, including the lot for trans-national education.

QAA has exercised its oversight of TNE in different ways. They used to separately look at the TNE of individual providers and how a university quality assures each the bodies whose awards they were validating in so-called collaborative audits which were separate from say, the institutional review of the 'home campus'. QAA has also frequently conducted country audits, most notably in Asia and the Gulf, in countries like China, Singapore, India but also in the Caribbean and more recently in Greece and now the Eastern Mediterranean. QAA has never performed a country-audit in Ireland.

QAA and QQI do however work together in the European Higher Education Area, most notably through the Pan-European Quality Assurance Association of agencies ENQA, of which I am the current president and on which numerous QAA staff have served as Board members, Vice-President and President. QQI and QAA signed a memorandum of association and information-sharing agreement in 2013. This MOU is active and the two bodies meet twice yearly either in a Dublin or in QAA's London office or alternatively by videoconference.

QQI has some intelligence on the activities of UK Universities operating in Ireland, initially on our maintenance of the Internationalisation Register, on behalf of the Departments of Education and Justice. Following the concerns caused by the closure of the private schools offering English-language and other UK-validated further education programmes, new

immigration reforms were introduced in June of last year and an Interim List of Eligible Programmes was established under the Department of Justice.

This list is exclusively for the purpose of recruiting students who require immigration permission. It lists a number of private Irish colleges that are offering awards validated by UK Universities. QQI has no oversight of these colleges other than where they also provide QQI awards or where QQI accredits their English Language provision, on a non-statutory legacy contract basis.

There is no definitive information about how these UK universities are quality assuring their provision in Ireland. We have no evidence that they have conducted site visits to the colleges and we know that QAA has not visited any of these colleges recently as part of collaborative audits and that QAA has not conducted a country review in Ireland, even though Ireland is, according to HESA, the 10<sup>th</sup> most popular place of domicile for students studying for UK Awards through TNE. QQI is aware that the Department of Justice has had concerns about some private colleges recruiting students onto programmes awarded by some UK universities where it was unable to reconcile the numbers of visas issued with the registration of those same students with the awarding university. The Department has suspended the issuing of visas for students in some colleges on this basis. QQI is also aware that some private colleges who were unable to receive approval from QQI to validate programmes subsequently had similar programmes validated by UK universities.

On foot of this and other information and a request from QQI, QAA is considering undertaking a country audit of U.K. awarding in Ireland in 2017.

As mentioned, legislation is currently going through the Westminster parliament to abolish the Higher Education Funding Council for England (HEFCE) and establish a new Office for Students (and merge the research councils into a new body also) which will have responsibility for the new Teaching Excellence Framework (TEF).

The new TEF will award Gold, Silver and Bronze levels to providers on the basis of a number of publicly available performance measures related to the national student satisfaction survey, progression and completion rates and employment/graduate entry statistics. Initially, the TEF awards will be made at institutional level and will cover undergraduate education only. It will not apply to an institution's TNE (transnational education) which will raise questions as to what a university award truly means in this context.

OfS will have responsibility for assessing the 'gateway' to degree awarding powers. This will involve the OfS evaluating the soundness including the financial soundness of new providers and also requesting the designated quality body (yet to be defined but likely to be QAA) to evaluate the academic soundness and quality of the proposed academic offering.

### **INFORMATION ON COLLEGES PROVIDING QQI AWARDS**

While neither QQI nor anyone else has comprehensive data on the number of students studying in private colleges in Ireland and the range of programmes involved, we do of course have information on our own awards.



It is interesting to look at the mixture of college type, size, student cohort and specialisations.

In 2015, QQI made major awards at Level 8 (Honours Bachelor or Higher Diploma) in 18 independent colleges. In 2015, QQI made over 800 awards at Level 8 in Dublin Business School, over 700 at Hibernian College, close to 600 and 400 at National College of Ireland and Griffith College.

Some of these colleges Level 8 output is comparable to some of the smaller IoTs. There were also 11 colleges where less than 50 awards at Level 8 are made annually. Many of these colleges offer QQI awards of course at lower levels in the NFQ and awards of other bodies also.

In terms of the mixture of QQI validated programmes on offer, many are in the areas of business (including marketing, accounting and management) and ICT (including multimedia and data analytics) but there are also offerings in media, journalism, photography and design and there are specialist colleges devoted to Montessori education, physical therapy, public relations, counselling and psychotherapy, for instance.

In terms of the international mix, QQI collects data, for the future purposes of the code of practice for international students and the international education mark, from the colleges that offer QQI awards. Some of the colleges recruit largely Irish (or other EEA) students while some others recruit mainly visa – required students.

In 2015, there were 17,140 students enrolled on programmes leading to QQI awards in higher education. Of these 13,436 (78%) were EEA nationals (including Irish nationals) and 3,704 (22%) were non-EEA citizens requiring immigration permission to be in the country for educational purposes.

Of the four largest colleges enrolling between 1400 and 3800 students, the non-EEA cohort varied between 5 and 40%. Two further colleges with over 500 students had over 50% and 87% visa-required students on QQI programmes.

## **CURRENT QQI LEGISLATIVE PROVISION and MONITORING**

Under the 2012 legislation establishing QQI, a prospective provider wishing to access QQI certification, has to establish quality assurance procedures, in accordance with QQI statutory quality assurance guidelines and submit them to QQI for approval. The provider then may submit a programme or programmes for validation according to the QQI validation policy and criteria and if successful may offer the programme for a period of 5 years, after which it must be re-validated, this time by the provider. QQI monitors the programmes on a desk-base. This may occur by requesting enrolment data and progression rates and through monitoring requests for certification.

If QQI has concerns (whether through its own monitoring or on foot of, for instance, learner complaints), we can institute a review of the validated programme or programmes and on foot of a recommendation from an expert panel report withdraw validation of the

programme. QQI can also review the effectiveness of the quality assurance procedures of a provider at any time under what is termed a 'for cause' review. If the quality assurance procedures are found to be defective and approval is withdrawn, the validation of all QQI programmes falls.

QQI has instigated a number of reviews of validation since its establishment and has withdrawn programme validation from some providers.

There is provision in the 2012 Act (carried through and modified somewhat) for so-called learner protection, where prior to validating a programme, the provider must have in place either academic (two similar programmes elsewhere) or financial (the requirement to refund the most recent fee (usually the previous year's fee) bonding.

This provision has had to be invoked a number of times, either when a provider collapses financially or where programme validation is withdrawn.

The operation of so-called PEL has never been entirely satisfactory and government has committed to amending the 2012 Act in this and other respects.

The 2012 Act also introduced the concept of a Code of Practice for the provision of education to International Learners and the power for QQI to award the International Education Mark (IEM) to providers who can demonstrate compliance with the Code of Practice.

Following a High Court case in 2015, QQI sought legal advice on some of the provisions of the 2012 Act. Further scrutiny by the Office of the Attorney General has determined that it is not possible, under the current legislation for QQI to explicitly recognise awards in the National Framework of Qualifications and this has meant that QQI has been unable to pursue the Awarding of the IEM.

The recent adoption by government of a new strategy for International Education and the experiences over the past number of years of the difficulties with the operation of and disorderly closure of some English Language Schools has prompted a rethink about some of the provisions around the assessment of provider fitness, the protection for learners, the recognition of qualifications and the bodies that award such qualifications and it is expected that these changes will be reflected in any amending legislation for the 2012 Act.

The expectation is that, following the enactment of this legislation, the introduction of the International Education Mark will make it possible to distinguish between providers who are offering a genuine high quality Irish-brand of higher education to international students and those who are not. QQI intends to play its part in ensuring that the intention of the new International Education strategy becomes a reality.