



**Guidelines for the Evaluation by QQI of the Capacity and Capability
of Specified Providers under the Qualifications and Quality
Assurance (Education and Training) Act 2012 (Capacity and
Capability Criteria) Regulations 2024**

Section 29B Qualifications and Quality Assurance (Education and Training) Act 2012

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1. Background

Ireland's commitment to the principle of building and maintaining a learner-centred education and training system is well established and enshrined in a body of legislation dating back some thirty years. Yet, while the commitment has been constant, the social, economic, cultural, and environmental conditions in which it must find expression are much less stable. Against a backdrop of ever present and ever accelerating change, the State's commitment to learners requires continuous attention and periodic renewal to remain current and relevant in shifting, and sometimes turbulent, settings and circumstances.

To this end the Houses of the Oireachtas passed important legislation in 2019: *the Qualifications and Quality Assurance (Education and Training) (Amendment Act) 2019*.¹ The suite of measures provided for in the 2019 Act is a mix of qualifications, quality assurance, and regulatory matters. They include the international education mark and the provision of a national Learner Protection Fund. All of the measures share a practical concern to protect the interests of learners engaged with the Irish education and training system, whether these interests relate to their general welfare, the quality of their learning experiences or the recognition of their learning achievements.²

Quality and Qualifications Ireland (QQI) is responsible, by law, for implementing the provisions set out in the 2019 Act. These give QQI certain new statutory functions and strengthen some of its existing responsibilities. A key provision provides a legal basis for QQI to examine the bona fides, legal personality, ownership, governance, and financial capacity of the providers with which it engages. This due diligence evaluation will enable QQI to assess a provider's capacity and capability to provide programmes of education and training consistent with the quality assurance processes and procedures required by the Qualifications and Quality Assurance (Education and Training) Act 2012 (2012 Act).

The business structure and financial status of a provider of education and training (further, higher and/or English language), or an awarding body, can significantly affect its ability to deliver a quality product to learners. It can impact on, for example, the quality and robustness of its infrastructure; its governance structure; the availability of staff to support academic quality and integrity; its capacity to

¹ [Qualifications and Quality Assurance \(Education and Training\) \(Amendment\) Act 2019 \(irishstatutebook.ie\)](#).

This amends the Qualifications and Quality Assurance (Education and Training) Act 2012 (2012 Act).

² The principle of learner-centred education and training was also reaffirmed in the *Statement of Strategy 2021-2023* from the Department of Further and Higher Education, Research, Innovation and Science [gov - Statement of Strategy 2021-2023 \(www.gov.ie\)](#).

provide support services to learners; the adequacy of the available physical and electronic resources to support learners learning; and its capacity to engage with a regulator.

The public interest is served by ensuring that QQI engages only with specified providers (defined below) that have appropriate financial capacity, governance structures, management and control structures, and are compliant with their legal obligations. Assessment of the business structure, governance, and financial status of providers should lead to a more robust sector and in turn support the provision of high-quality education and training nationally while protecting the reputation of the sector nationally and internationally.

Section 29A of the 2012 Act requires a “specified provider”, other than an exempt provider, to demonstrate to QQI that it meets the criteria specified in regulations determined by the Minister for Further and Higher Education, Research, Innovation and Science, before it engages with QQI in the context of the 2012 Act, and on an ongoing basis. These regulations are provided for in section 29B of the 2012 Act. Sections 29A to 29C are attached as *Appendix 1*.

A “specified provider”³ means:

- (i) a relevant provider⁴
- (ii) a listed awarding body, and
- (iii) an associated provider, or linked provider, that offers, for reward, a programme leading to an award included within the National Framework of Qualifications (the Framework).⁵

³ Section 29(3)(a)

⁴ A relevant provider means: (a) a previously established university, (b) an educational institution established as a university under section 9 of the Act of 1997, (c) the Royal College of Surgeons in Ireland, (d) the Dublin Institute of Technology, (e) a provider whose programme of education and training is validated under section 45; (f) a provider who has entered into an arrangement with an awarding body under section 48, (g) a provider to whom authority to make an award has been delegated under section 53, (h) a provider who is authorised to use the international education mark under section 61 other than a provider who is so authorised where that provider is also, (i) a provider referred to in paragraphs (a) to (g), or (ii) a linked provider, (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. (*Section 2 of the 2012 Act*).

⁵ An entity only becomes a listed awarding body or an associated provider after it has satisfied the relevant criteria under section 29A and has a positive outcome from its application to QQI under another provision in the 2012 Act.

Section 29A does not apply to specified providers listed in section 65(6) 2012 Act.⁶

The Minister for Further and Higher Education, Research, Innovation and Science has, pursuant to section 29B of the 2012 Act, made regulations specifying the criteria to be met by provider to provide reasonable assurance to QQI 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 the 2012 Act.⁷

These criteria are referred to as “the relevant criteria” and are attached as Appendix 2.

The purpose of the regulations is to set criteria that a specified provider must meet and continue to meet in order to engage with QQI. In meeting these criteria QQI can be satisfied that:

- (i) the specified provider will be able to meet and continue to meet the requirements of QQI and to achieve its targets and sustain the quality of the education and training that it offers; and
- (ii) enrolled learners should not be at risk of being unable to complete their programme and receive the associated award (if relevant) because of financial or other business failure.

The eligibility criteria ensure that entry into the sector is set objectively and is sufficiently high to underpin and protect the quality, integrity, and reputation of the sector. The relevant criteria establish clear expectations for providers and awarding bodies, and a baseline for operational quality and integrity from which providers can continue to build excellence and diversity of provision.

⁶ Section 65(6) 2012 Act: (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) *deleted*, (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 Section 29B(1) 2012 Act

QQI has developed Guidelines to support the relevant criteria. These Guidelines, which are included in **Section 3**, identify some of the factors that will be considered by QQI in determining if those criteria are met.

2. QQI's Approach

QQI has developed an online interactive database/form to facilitate a process to evaluate each specified provider in the context of the "relevant criteria" (criteria). This is the QQI Due Diligence Process. Specified providers must provide the information required as part of their engagement with QQI. The due diligence database/form is designed to cater for different types and sizes of specified providers. The information required by QQI is input into the QQI database by each specified provider. When the form has been completed and submitted by a specified provider to QQI for evaluation, no adjustment/amendment to the form will be possible until the evaluation process has been completed.

Following the conclusion of an evaluation process, the specified provider will once again have access to the interactive form/database. This will constitute the business profile of the specified provider for QQI, and the specified provider will be required to keep the information contained therein up to date. Throughout their period of engagement with QQI, specified providers will be required to maintain the currency and validity of the information required in the interactive form. Failure to do so may impact on the ongoing engagement between QQI and the specified provider, and lead to a review of approvals and/or other authorisations held by the specified provider.

Supplementary documentation, in the form of handbooks, is available to guide providers through the due diligence evaluation process. These include: (i) Due Diligence Guide for Specified Providers; and (ii) An IT Guide: How to Navigate the Due Diligence Database.

QQI's approach in assessing compliance with the relevant criteria by specified providers will be transparent, consistent and fair. It will place significant emphasis on promoting and facilitating a culture of self-assessment and self-assurance as an integral part of a provider's daily operations. Assessment will be proportionate to that required for the necessary regulatory purpose and will include a risk analysis of the following:

- financial status and stability;
- internal risk management;
- strategic plans;
- management and governance;
- track record; and regulatory history.⁸

⁸ It is understood that with new/newer specified providers that engagement with regulatory bodies may not yet have occurred.

QQI recognises and acknowledges the diversity of providers and awarding bodies. A proportionate and tailored risk assessment approach⁹ will enable providers and awarding bodies from different sectors, and of different sizes, histories, business and governance models, to satisfy QQI's requirements in different ways. This will minimise the regulatory burden for providers and awarding bodies. While processes will be the same for every specified provider, the information gathered will reflect aspects that are unique to each provider or awarding body.

QQI has significant expertise in engaging with providers and awarding bodies of different sizes, different legal and business structures, different learner cohorts, and different funding models. This expertise and understanding will be evident in the system and process designed to facilitate specified providers in demonstrating that they satisfy the relevant criteria.

Additional monitoring of specified providers will be supported through the sharing of information, including for example complaints received by QQI, issues raised in trusted media, and the output from cyclical quality assurance reviews.

⁹ Risk refers to current or future non-compliance by a provider with QQI requirements and policies.

3. Relevant criteria to be met by Specified Providers under Section 29B 2012 Act and supporting Guidelines

General

The matters to which QQI will have regard in determining whether each of the relevant criteria have been met by a specified provider are summarised below. In relation to documentation to be provided, copies of originals will be required. Where documentation presented is in a language other than English or Irish, certified translations will be required.

Review of the Guidelines

QQI will undertake a review of the Guidelines within three years of the date of the relevant Statutory Instrument, SI 427 2024, 1st September 2024.

Interpretation

References to the **Governing Body** includes references to the Board of Directors, the Trustees in the case of charitable entities, the partnership in the case of a partnership, and equivalent term if an entity is established outside the State.

References to a **company and/or entities** includes references to entities of any form, including trusts, unincorporated entities, partnerships, and other legal entities.

References to **director(s)** includes trustees, partners, or equivalent, as appropriate.

References to **member(s)** includes: a natural person who is part of the governing body of a business; an individual shareholder, partner, or limited liability company; a person who holds shares and whose name is registered on the register of members; the real owner of the company collectively constituting it as a corporate body.

References to **staff** include individuals on contracts of service or contracts for service.

Relevant Criterion (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 to the following characteristics:

- (a) The structure of the business of the provider, and its legal form;
- (b) If the provider is 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.

The specified provider must implement mechanisms for the competent governance of its education and training provision and other related activities. These should operate according to an institutional governance policy framework¹⁰ relevant to its education and training activities, and which should be effective in maintaining the quality of the education offered. This criterion must be met so that QQI can be satisfied that the specified provider as a body/entity is properly constituted, is equipped to implement quality assurance procedures, and provide programmes on a sustainable basis, with sound governance and management.

¹⁰ Evidence of competent management and governance structures proportionate and appropriate to the provider entity, awarding body, and/or education and training offered is required.

In determining whether this criterion is met by the specified provider, QQI shall require the following information and supporting documentation to be submitted to it:

- a) The legal status of the entity;
- b) The specified provider's place of incorporation and residence and proof of both;
- c) The registered name of the specified provider, including the name of the legal entity and trading name(s);
- d) The constitution of the entity appropriate to its legal status;
- e) The extent and duration of the specified provider's operation in the State and/or elsewhere;
- f) Ownership details, to include beneficial owners¹¹ and material shareholders, providing certified copies of passports, residence number(s), expiry date of residence permit(s), etc.;
- g) Ownership details of group entities, including related companies¹², to include beneficial owners and material shareholders, certified copies of passports, residence number(s), expiry date of residence permit(s), etc.
- h) Details of directors, shadow directors, and/or influential non-owners of the provider entity and group companies/entities;
- i) Copy of the information retained for the purpose of the Register of Beneficial Ownership of Companies and Industrial & Provident Societies;
- j) Name and contact details of legal representatives, external auditors and accountants, and other financial advisors, together with details of their professional membership and registration number;
- k) Locations of the head office, administrative offices and educational buildings, including overseas locations, if applicable;

¹¹ A beneficial owner is a person who owns or controls an entity. A person or entity will generally be recognised as having 'control' if they have at least 25% of the shares or voting rights. Companies limited by guarantee and without share capital do not have voting rights like companies limited by shares, other than in most cases, one member, one vote. If such a company has three or fewer members, the beneficial owners will be those members. If such a company has more than three members, then those who have 'control by any other means' must be identified. See Appendix 3.

¹² A company will be deemed to be related to another company if that company can: control and/or materially influence the activities or internal affairs of the applicant company; materially influence the financial and operating activities of the applicant company; be financially interested in the applicant company's success or failure; or be a member of the applicant company. The term will also encompass an entity controlled by the applicant entity, or an entity where the applicant can influence its affairs. A related company will also include the holding company of the applicant company, a subsidiary of the applicant company, a subsidiary of the holding company of the applicant company, and a company with one or more directors who are also directors of the applicant company. It can also encompass a partnership and other relationships.

- l) An up-to-date Companies Registration Office (CRO) summary print-out, or equivalent from another relevant jurisdiction, if applicable;
- m) Three years of CRO returns, or equivalent;¹³
- n) The corporate governance policy, including evidence of compliance with relevant governance codes;
- o) An organisational chart and governance structure of the entity and the group to which it belongs (where applicable);
- p) If the applicant is a subsidiary company, a parent company, a member of a group, or a related company, the corporate structure and governance structure of the group should be provided, together with any relevant legal instruments between the parent and subsidiary or related companies;
- q) If the applicant provider is a member of a group, or a related company, three years of CRO returns, or equivalent for each of the entities;¹⁴
- r) Any other documentation or information deemed necessary to satisfy this criterion.

Relevant Criterion (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.**

The specified provider must implement mechanisms for competent management and leadership of the education and training provision and other related activities. These should operate according to a strategic management plan relevant to their education and training activities. This should be effective in maintaining the quality of the education and training offered.

¹³ If the entity is operating for less than three years, then all years available should be provided.

¹⁴ If the entity is operating for less than three years, then all years available should be provided.

This criterion must be met so that QQI can be satisfied that the specified provider as a body is properly managed, with sustainable structures and policies to implement quality assurance procedures, and provide programmes on a sustainable basis, with sound governance and management.

In determining whether this criterion is met by the specified provider, QQI shall require the following information and documentation to be submitted to it:

- a) Details of the members of the Governing Body (or equivalent¹⁵) and senior executives, including certified copies of passports, residence permit(s)/number, expiry date of residence permit(s), etc.;
- b) A detailed breakdown of management structures and roles, including the identity of each manager and their qualifications;¹⁶
- c) The curriculum vitae of each member of senior management and Governing Body (if appropriate);¹⁷
- d) The specified provider's strategic management plan, together with the associated analysis framework;
- e) A list of key stakeholders;
- f) The specified provider's risk management policy, risk management plan, risk appetite statement and named Chief Risk Officer (if appropriate);
- g) If the specified provider is a subsidiary company, a member of a corporate group or a related company, the parent company's strategic plan, risk management plan and risk appetite statement for the group;
- h) Documented evidence of the regular review and evaluation of strategic and operational risks, risk management plan, and associated implementation plans, together with the monitoring and reporting of risks to the specified provider's Board, or equivalent;
- i) The specified provider's/entities emergency/business continuity plan to deal with emergencies or crises;¹⁸

QQI may also require the following:

- j) Details of board/trustee meetings or equivalent, to include agendas, minutes of meetings, actions arising from meetings, and follow-up on actions arising;

¹⁵ The nature and size of the Governing Body/structure of each entity will be appropriate to its size, legal structure and the complexity of its business/business model. See footnote no.10.

¹⁶ A proforma template will be provided for completion.

¹⁷ A proforma template will be provided for completion.

¹⁸ This may be incorporated into the Risk Management Plan.

- k) Details of induction/training for directors or equivalent, together with the governance code, training manual and/or handbook for directors or equivalent;
- l) Any other documentation or information deemed necessary to satisfy this criterion.

Relevant Criterion (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.

This criterion must be met so that QQI can be satisfied that the specified provider has the necessary human resources available to it, with the necessary expertise, knowledge, and experience, to implement quality assurance procedures and provide programmes of education on a sustainable basis. It should also be satisfied that the specified provider is capable of recruiting and maintaining the necessary human resources.

In determining whether this criterion is met by the specified provider, QQI shall require the following information and documentation to be submitted to it:

- a) The specified providers human resource policy;

- b) Sample employment contracts of staff currently employed, to include contracts to reflect the various types of employment, e.g. full-time, part-time, temporary, contract, etc.;
- c) The number of staff involved directly and indirectly in programme provision (academic/teaching, administrative and technical), including the nature of their contracts, their educational qualifications, their experience, and their expertise;
- d) The ratio of permanent full-time staff to contracted full-time staff, permanent part-time staff to contracted part-time staff, permanent staff to contracted staff, full-time staff to part-time staff, and employment to services contracts;
- e) Contracts for external examiners and other similar experts (where applicable);
- f) Staff turnover and continuity;
- g) A breakdown of changes in staff numbers and types over the previous three years;
- h) Staff projections and turn-over for the next one to three years;¹⁹
- i) Staff costs and projected change to staff costs for the next one to three years;²⁰
- j) Staff recruitment and selection policy;
- k) Evidence of Garda vetting of teaching staff and/or other relevant staff as required;
- l) Policy in relation to the use of interns and other unpaid staff;
- m) Policy in relation to continuing professional development (CPD) and the CPD budget provision;

QQI may also require the following:

- n) Other relevant human resource policies;
- o) Workload model for educational staff, both administrative staff and academic/teaching staff;
- p) Evidence of oversight by the Governing Body/Board/equivalent of human resource policies and confirmation that they satisfy themselves of their suitability and appropriateness; and
- q) Any other documentation or information deemed necessary to satisfy the criterion.

¹⁹ The number of years required will relate to the nature of the provision. If the specified provider is offering major awards that have a duration of two years or longer, then the information provided must span a three-year period. This may be reduced to one year if the entity is involved in the provision of English language education, or non-major awards and component awards, or programmes with a duration of less than one year, or any combination of the three types of provision.

²⁰ As for footnote no.19

Relevant Criterion (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.**

The provision of education and training to learners involves a moral, legal, and financial responsibility to learners, to potential learners, to staff, and to the State. This criterion must be met so that QQI can be satisfied that the personnel with control of a specified provider are fit and proper persons to assume this responsibility.²¹

In determining whether this criterion is met by the specified provider, QQI shall have regard to the following matters in relation to those persons and specified in Regulation 13:

- (a) Any convictions registered against the person, and if so, their nature or gravity, and the time elapsed since the conviction or judgement;²²**
- (b) Whether the person is currently the subject of criminal proceedings before a court;**

²¹ All individuals with decision making powers must satisfy this criterion.

²² A record of fraud would prevent an application from being progressed.

- (c) Whether the person has been the subject of any adverse findings in a court, tribunal, or commission in relation to Employment Law²³ 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.

²³ To include, but not limited to, the following: Employment Equality Act 1998 to 2011, Payment of Wages Act 1991, Maternity Protection Act 1994 and 2004, Safety, Health and Welfare at Work Act 2005, Minimum Notice & Terms of Employment Act 1973-2005, Organisation of Working Time Act 1997, Unfair Dismissals Acts 1977-2015, and The EC (Protection of Employees on Transfer of Undertakings) Regulations 2003.

Relevant Criterion (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.

When learners enrol with a provider, on a programme or for an award, they are investing in their future, often in relation to awards that they hope to receive in the future. This criterion must be met so that QQI can be satisfied that the specified provider has a sustainable and viable business plan,²⁴ including the necessary financial resources available, before it offers programmes or awards to the public.

In determining whether this criterion is met by the specified provider, QQI shall require the following information and supporting documentation to be submitted to it:

- a) The provider's business plan for a duration sufficient to cover the duration of the programmes that it offers and/or intends to offer.²⁵ This should include details of premises, library and technical facilities, administrative functions, and investment in education delivery, staff development and student supports;

²⁴ The business plan should give a realistic description of the viability and sustainability of a specified provider. It should include plans for education and training, staffing, performance targets, measurements of progress against targets, and corrective action which will be undertaken to address under-performance. It should also include all other plans, e.g., building work, new services, new forms of accreditation or association membership applications, etc. Any ongoing funding or grant applications should also be included.

²⁵ Business plans for two years may be sufficient where the provision is English language education only or the duration of all programmes offered does not exceed one year. The period should be longer where the duration of any programme is longer than one year.

- b) The specified provider’s business continuity plan;
- c) Cash-flow projections associated with the business plans;
- d) Financial projections to include projected income and expenditure statements, projected cash-flow statements, and projected balance sheets for the next three years. These should include changes to revenues, projected enrolments, staff costs, assets and other income streams;
- e) The specified provider’s business continuity plan and associated resourcing; and
- f) Any other documentation or information deemed necessary to satisfy the criterion.

Relevant Criterion (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.**

The provision of quality education and training requires appropriate resources, physical, technical and human. This criterion must be met so that QQI may be satisfied the resources available for the delivery of the programme are fit-for-purpose and adequate.

In determining whether this criterion is met by the specified provider, QQI shall require the following information and supporting documentation to be submitted to it:

- a) Details of premises to be used for programme delivery, research, library facilities, technical and administrative facilities, student supports, etc.
- b) Details of the ownership of all premises used, to include rental/lease agreements, and associated costs, and duration;

- c) Details of equipment and technical resources required for the suite of programmes being provided.
- d) Any other documentation or information deemed necessary to satisfy the criterion.

Relevant Criterion (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.**

For a business plan to be implemented over a sustained period, the specified provider must ensure that it has the necessary financial resources available to it. The specified provider must be financially viable and must have the capacity to allocate sufficient financial and other resources to maintain the viability of the entity and its business model. This requires regular monitoring of financial performance

and cash-flows, the effective operation of financial safeguards and controls, and adherence to appropriate/relevant accounting standards.

Financial viability (a specified provider's current and immediate to short-term financial strength and capacity) and financial sustainability (the medium and long-term view of a specified provider's financial strength and capacity which supports continuity of business) are key in this regard. The specified provider must satisfy QQI that it is financially viable and sustainable, with a low risk of failure on financial grounds over the short term, medium term, and long term. Specified indicators will be monitored over a three-year period.²⁶ A material change in any of these indicators (5% or greater, up or down) may trigger a review.

In this context, QQI shall have regard to the current financial position of the provider and its financial history, to include its assets, liabilities, debts, profits, profit margins, cashflows, liquidity, staff costs, funding requirements, and available funding, at the time of the application and over the preceding three years.

In determining whether this criterion is met by the specified provider, QQI shall require the following information and documentation to be submitted to it:

- a) Details of assets and liabilities;
- b) Sources of funding;
- c) Revenue;
- d) Profit and loss;
- e) Financial viability indicators including:
 - i. Operating profit margin
 - ii. Liquidity
 - iii. Total liabilities to tangible assets
 - iv. Debt service coverage
 - v. Operating cash-flow ratio;
 - vi. Break-even/forecast break-even.
- f) Sustainability indicators including:
 - i. Change in revenue percentage
 - ii. Asset replacement
 - iii. Year on year change in enrolments

²⁶ Formula to calculate these will be provided in the online database.

- iv. Year on year change in staff costs
 - v. Year on year change in staff numbers
 - vi. Year on year change in learner supports
 - vii. Combined revenue streams
 - viii. Break-even
- g) Such further supporting documentation as may be required, including, but not limited to, bank statements, relevant loan or funding agreements, and relevant letters of funding support;²⁷
- h) Any other documentation or information deemed necessary to satisfy the criterion.

Relevant Criterion (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.**

Financial management of the resources available to it are key to a specified provider being able to operate on a sustainable basis. This criterion must be met so that QQI can be satisfied that the specified provider has proper financial controls in place before it offers programmes or awards to the public.

In determining whether this criterion is met by the specified provider, QQI shall require the following information/documentation to be submitted to it:

- a) The specified provider's financial management strategy and associated policies;²⁸

²⁷ Where possible, reliance will be placed on financial data and information that the specified provider has produced to meet its own needs. However, it may sometimes be necessary to request additional financial details to consider fully whether the specified provider meets the relevant criterion, e.g. where the specified provider has less than three years operating history.

²⁸ To include, but not be limited to the following: the procurement policy, approval levels for expenditure, auditor management letters or equivalent (if available), internal audit reports, etc.

- b) The specified provider’s financial safeguards and controls together with the relevant accountant standards to which it adheres;
- c) Internal audit reports and evidence of action on these;
- d) Details of any escrow accounts held under section 65(8), together with their operation and management;
- e) Details of financial software utilised;
- f) Details of staff with responsibility for the management of the accounting function and financial management;
- g) The financial report as presented to the governing body (or equivalent) of the provider for the preceding three years;²⁹
- h) Any other documentation or information deemed necessary to satisfy the criterion.

Relevant Criterion (9)

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

In determining whether this criterion is met by the specified provider, QQI shall require the following information/documentation to be submitted to it:

- a) The specified provider’s (company, parent, and ultimate parent) audited accounts or financial statements (as appropriate) for the preceding three years;^{30 31}
- b) The specified provider’s management accounts (company, parent and ultimate parent) for the period between the most recently filed financial statements/audited accounts and the date of the application;³²
- c) The profit & loss account for current year (year to date);³³

²⁹ This may already have been provided in a different context.

³⁰ Audited accounts should be provided where there is a legal requirement on the entity to provide the accounts. In other circumstances, financial statements approved by an external accountant should be provided. The professional accountancy body of the accountant and their registration number must be provided. A signed pro-forma statement from the registered accountant should be provided confirming that the provider is compliant with sections 281-285 Companies Act 2014 and the accounting standards adopted.

³¹ If operating for less than three years, then all years available.

³² For a new company without financial statements, management accounts to the date of the application to QQI, or a date to be specified by QQI, should be provided.

³³ Financial information required from new providers will include the number of learners, fees, and associated costs in respect of each programme or cohort of learners.

- d) Income and expenditure accounts and cash-flow statements for the preceding three years;
- e) Confirmation of adherence to appropriate/relevant accounting standards; and
- f) Any other documentation or information deemed necessary to satisfy the criterion.

Relevant Criterion (10)

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

In determining whether this criterion is met by the specified provider, QQI shall require the following documentation to be provided to it:

- a) Income and/or corporation tax returns for the preceding three years, or the number of years the specified provider has been trading if fewer than three years;
- b) The specified provider's Tax Clearance Access Number (TCAN), tax reference number/PPSN, for the purpose of tax clearance from the Revenue Commissioners;
- c) The name, contact details and Tax Agent Identification Number (TAIN) for the specified provider and related entities in the business of education and/or training and if relevant those of group/related companies;
- d) A certificate of tax compliance from the tax authorities of each other state in which the specified provider has an education and/or training business.

Relevant Criterion (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.**

The provision of education and training involves significant staffing resources. This criterion must be met so that QQI can be satisfied that the specified provider has adequate human resources to deliver its suite of programmes and that those human resources are engaged on a legal and sustainable basis.

In determining whether this criterion is met by the specified provider, QQI shall require the following information and documentation to be submitted to it:

- a) Copies of employee, contractor, and agents contracts;
- b) Policies in relation to sick pay, holiday pay and other entitlements;
- c) Details of cases, both current or historic heard at a Court, Tribunal, or Commission;
- d) A signed declaration as to its compliance with its employment law obligations, including relevant employment regulation orders;³⁴
- e) Any other documentation or information deemed necessary to satisfy the criterion.

Relevant Criterion (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.**

³⁴ A proforma letter will be provided.

An understanding of its GDPR obligations, and their implementation, are necessary for the sustainable delivery of services. This criterion must be met so that QQI can be satisfied that the specified provider is capable of complying with its GDPR obligations to learners on a sustainable basis.

In determining whether this criterion is met by the specified provider, QQI shall require the following documentation to be submitted to it:

- a) The specified provider's Data Protection Policy;
- b) The curriculum vitae and training record of the specified provider's Data Protection Officer;
- c) All relevant policies and agreements in relation to the retention and processing of personal data by or on behalf of the specified provider;
- d) All relevant policies and agreements in relation to the third parties to whom data is or may be transferred by the specified provider;
- e) The specified provider's IT Security Policy, to include the policy and procedure to secure their network against a cyber attack;

and may also require the following,

- f) A description of how the security of the IT network and its data are protected including the cybersecurity tools used;
- g) Documentation, or extracts from documentation, that demonstrate compliance by the specified provider with the data protection principles, including accountability;³⁵
- h) Any other documentation or information deemed necessary to satisfy the criterion.

³⁵ Such documentation would include, but would not be limited to, Data Protection Impact Assessments (DPIA's), vendor risk or due diligence records, records of processing activities, consent practices, etc.

Appendix 1

Section 29A, 29B, 29C Qualifications and Quality Assurance (Education and Training) Act 2012 (as amended)

“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 12 [2019.] Qualifications and Quality Assurance [No. 32.] PT.2 S.9 (Education and Training) (Amendment) Act 2019. 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 14 [2019.] Qualifications and Quality Assurance [No. 32.] PT.2 S.9 (Education and Training) (Amendment) Act 2019. 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 15 PT.2 S.9 [No. 32.] Qualifications and Quality Assurance [2019.] (Education and Training) (Amendment) Act 2019. 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.”.

Appendix 2

Ministerial Regulations under s.29B Qualifications and Quality Assurance (Education and Training) Act 2012

I, _____, 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) and 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
- (q) 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 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,

_____ 2024.

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.

Appendix 3

Beneficial ownership

A Beneficial Owner is defined in Article 3(6), the EU's Fourth Anti-Money Laundering Directive (4AMLD³⁶), as any natural person(s) who ultimately owns or controls a legal entity, either through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the entity, including through bearer shareholdings, or through control via other means.

These include:

- ownership (directly or indirectly) of more than 25% of the company/entity shares,
- controlling (directly or indirectly) more than 25% of the company/entity voting rights, or
- control by other means as follows.

“Control by other means may, inter alia, include the criteria of control used for the purpose of preparing consolidated financial statements, such as

- *through a shareholders' agreement,*
- *the exercise of dominant influence or*
- *the power to appoint senior management”.*

If a relevant entity is a subsidiary owned by another corporate entity, any natural person(s) who holds or controls a shareholding of 25% plus one share, or an ownership interest of more than 25% in the parent corporate entity, is a beneficial owner(s) of the subsidiary.

If a relevant entity is a subsidiary owned by multiple corporate entities, Article 3(6), 4AMLD, states that a shareholding of 25% plus one share or an ownership interest of more than 25% in a subsidiary held by multiple corporate entities which are under the control of the same natural person(s), shall be an indication of indirect beneficial ownership.

Ultimately, it is a natural person(s) who must be identified and entered on the RBO as the beneficial owner(s) of the relevant entity, irrespective of how many layers of ownership there are in the company/society's structure. The name of another company/society will not suffice.

³⁶ Article 30(1) of the EU's Fourth Anti-Money Laundering Directive (4AMLD) requires all EU Member States to put into national law provisions requiring corporate and legal entities to obtain and hold adequate, accurate and current information on their beneficial owner(s) in their own internal beneficial ownership register.

If, after having exhausted all possible means and provided there are no grounds for suspicion, no natural person is identified as a beneficial owner, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s) (e.g., the Director(s) or CEO) shall be deemed to be the beneficial owners.