

A Guide to Learner Protection

Protection of Enrolled Learners

Part 6 of the Qualifications and Quality Assurance (Education and Training) Act 2012

Contents

Section 1: Introduction.....	3
Section 2: Statutory basis for learner Protection.....	4

Section 1: Introduction

The legislation that amended *Qualifications and Quality Assurance (Education and Training) Act 2012* (2012 Act)¹ replaced Part 6 of the 2012 Act in its entirety. Part 6 is concerned with the Protection of Enrolled Learners.

The amended *Part 6 Protection of Enrolled Learners*, commenced on 1st September 2024, has introduced a statutory Learner Protection Fund and a Protection of Enrolled Learners Annual Charge. It has also expanded the scope of learner protection. Under the 2012 Act, as originally enacted, only those learners on programmes of education and training, of 3 months duration or longer, and leading to QQI awards came within the scope of the Part 6. The amended Part 6 applies to a wider range of learners, including learners on English language programmes (of any duration) in English language schools that are authorised to use the TrustEd Ireland brand, and learners in certain listed awarding bodies (LABs).

The original protection of enrolled learner provisions in place on 1st September 2024, in providers of programmes leading to QQI awards and some new providers with programme validation in process, continue in place until a specified expiry date. This expiry date is 1st September 2027, or such earlier date as may be appointed by the Minister for Further and Higher Education, Research, Innovation and Science.

The original legislation and the amended legislation both identify providers that are exempt from the protection of enrolled learner provisions.²

All references throughout this document are to the amended *Part 6 Protection of Enrolled Learners* unless otherwise stated.

¹ Qualifications and Quality Assurance (Education and Training) (Amendment) Act 2019

² Section 65(6) 2012 Act (as amended) [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie)

Section 2: Statutory basis for learner Protection

(a) General

Part 6 2012 Act comprises 3 sections, section 64, section 65, section 66, section 66A and section 67.

Section 64 deals with interpretation and the application of Part 6.

Section 65 relates to the obligation of certain providers to pay an annual charge into the Learner Protection Fund.

Section 65A deals with existing enrolled learner protection arrangements and the status and period for which such arrangements will continue to apply.

Section 66 deals with the establishment, management and operation of the Learner Protection Fund. It also provides for Ministerial Regulations in relation to the establishment, maintenance, and operation of the Learner Protection Fund.

Section 66A concerns itself with the payment of annual charges into the Learner Protection Fund. It also provides for Ministerial Regulations for the prescription of the annual charge to be paid by providers into the Learner Protection Fund.

Section 67 outlines the obligations on providers to furnish information to enrolled learners.

(b) Section 64 2012 Act: Interpretation and application

Protection of enrolled learners applies to:

- (i) programmes of education and training of 3 months or longer duration³, and
- (ii) English language programmes.

³ Three months' duration refers to the period from the commencement of instruction to the point when learners have been assessed for the purpose of completing the programme and the result of the assessment have been confirmed by the provider. This is the point at which the learner is no longer vulnerable to the cessation of the programme. Three calendar months applies regardless of mode or nature of delivery or volume of learning.

A 'protected programme default event' refers to circumstances where a provider has accepted moneys from or on behalf of learners and:

- (i) does not provide the programme for any reason, or
- (ii) ceases to provide the programme before that programme has been completed by the learners.

(c) **Section 65: Obligation of certain providers to pay an annual charge into the Learner Protection Fund – key provisions**

Section 65(1) states that if

- (a) a relevant provider, an associated provider or a linked provider (all referred to as an 'obligated provider') offers for reward, a programme of education and training leading to an award that is an award included within the Framework, or
- (b) a provider offers for reward an English language programme (also referred to as an 'obligated provider')

it shall in each year, pay into the Learner Protection Fund, the 'annual charge' as prescribed under section 66A(1).

Section 65(2) states that the annual charge shall be paid into the Learner Protection Fund prior to the commencement of the provision by the obligated provider of the programme **and** prior to acceptance by the provider of any payment by or on behalf of the learners for enrolment on that programme.

Section 65(3) states that the Authority has the discretion to determine, by class of obligated provider, that the annual charge be paid after either of the events in section 65(2).

Section 65(4) states that the charges received by the Authority will be remitted to the Learner Protection Fund.

Section 65(5) requires an obligated provider to provide to the Authority any information required by it to determine the amount of the charge.

Section 65(6) lists providers that do not come within the learner protection charge.⁴

Section 65(7) addresses the cessation of a requirement for a provider to pay a charge in respect of a programme.

Section 65(8) requires an obligated provider that receives moneys⁵ in relation to a programme more than 40 days before the commencement of the provision of the programme, for or on behalf of the learner, to place that money into an escrow account.

Section 65(9) stipulates how and when the money may be drawn upon from the escrow account.

(d) Section 65A: Existing learner protection arrangements – status and period from which such arrangements shall continue to have effect – key provisions

Section 65A(1) defines the previous section 65 with reference to the date on which the new section 65 commences. That date is 1st September 2024.

Section 65A(2) states that statutory learner protection arrangements⁶ in place on the date of the commencement of the new section 65 (i.e. 1st September 2024) may continue subject to section 65A(3).

⁴ *Section 65(6) 2012 Act, providers that are not within the scope of the learner protection charge: (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.*

⁵ Moneys includes tuition fees, registration fees, examination fees, library fees, student service fees and any other fees by or on behalf of the learner to the provider in respect of enrolment on the relevant programme and which related to the provision of education, training and related services.

⁶ Existing learner protection arrangements that fall within this section are those that are established under the s.65 arrangements and in place on 1st September 2024. These arrangements apply to further education and training and higher education and training programmes that lead to QQI awards. Existing PEL arrangements in place in English language schools are not statutory arrangements and therefore do not fall within this provision.

Section 65A(3) states that statutory learner protection arrangements in place at the commencement of the new section 65 (1st September 2024) may remain in place for a three year period from that date, i.e. until 31st August 2027, unless an earlier date is appointed by the Minister under section 65A(4).

Section 65A(4) states that the Minister may appoint by order a date earlier than the 3 year period stipulated in section 65A(3) and any such order may relate to different classes of providers.

(e) **Section 66: Protection of Enrolled Learners Fund**

Section 66(1) requires the Authority to establish maintain and operate the Learner Protection Fund.

Section 66(2) makes provision for Ministerial Regulations to prescribe requirements for the Learner Protection Fund. These Regulations require the consent of the Minister for Public Expenditure and Reform and are detailed in **S.I. No. 430 of 2024** [Learner Protection Fund Regulations](#).

Section 66(3) stipulates that if there is a programme default event, money in the Learner Protection Fund may be used by the Authority to:

- (a) defray the costs that will be incurred by the enrolled learners in completing the programme, if that is possible.
- (b) defray the payment of fees incurred if the enrolled learner transfers to another provider with a similar programme.
- (c) refund the most recently paid moneys, in respect of the current academic year, by or on behalf of a learner, following submission by an enrolled learner (or on the learner's behalf) that (a) and (b) above is not practicable.

Section 66(4) provides the following definition for 'moneys' in section 66(3)(c) above. Moneys includes tuition fees, registration fees, examination fees, library fees, student service fees and any other fees by or on behalf of the learner to the provider in respect of enrolment on the relevant programme and which related to the provision of education, training and related services.

Section 66(5) and section 66(6) requires the Authority to make all reasonable efforts to ensure that when a protected programme default event occurs an enrolled learner may have a reasonable opportunity to complete a programme similar to that commenced with the original provider.

Section 66(7) states that the Authority may establish criteria by reference to which it shall determine if a particular programme is similar to the programme which has ceased to be offered.

Section 66(8) provides for recovery of either a defrayment or refund from the Learner Protection Fund (Fund) from the provider of the discontinued programme as a simple contract debt.

Section 66(9) requires the Authority to pay to the Fund any money recovered under section 66(8).

Section 66(10) enables the Authority to

- (a) recoup costs incurred by it in establishing, maintaining or operating the Fund or in the protection of enrolled learners; and
- (b) repay the Minister, from money in the Fund, money received by the Fund from the Oireachtas under section 66A(4).

Section 66(11) to section 66(14) relate to the requirement of the Authority to report on the Learner Protection Fund annually and not later than 31st March in each year. This report is concerned in particular with defrayments and/or refunds from the Fund. The report, which will not disclose the identity of the learners involved, shall be submitted to the Minister who will submit it to each House of the Oireachtas.

Section 66(15) to section 66(17) relate to a requirement of the Authority to conduct a review of the operation of the Fund on the 5th anniversary of the establishment of the Fund and on every 5th anniversary. This review shall have regard to submissions from providers in relation to the operation of the Fund and the annual charge. The report must be published and submitted to the Minister who will submit it to each House of the Oireachtas.

(f) Section 66A: Regulations in relation to the payment of annual charges into the Learner Protection Fund

Section 66A(1) provides for Ministerial regulations that shall prescribe the annual charge to be paid by each obligated provider. These regulations are detailed in **S.I. No. 428 of 2024** [Protection of Enrolled Learners Annual Charge Regulations](#).

Section 66A(2) provides for the Minister to prescribe different charges for different classes of provider and different classes of programmes. A class of programme may be defined by reference to:

- (a) the number of learners enrolled on the programme;
- (b) the number of international learners enrolled on the programme;
- (c) the duration of a programme;
- (d) fees charged for the programme, and
- (e) any other matter that the Minister considers relevant, including the desirability of the Fund having sufficient money.

Section 66A(3) provides for a penalty if a provider fails to pay the annual charge on the date prescribed.

Section 66A(4) provides for the Minister, with the consent of the Minister for Public Expenditure and Reform, to pay into the Fund moneys provided by the Oireachtas. (section 66(10)(b)).

Section 66A(5) provides for unpaid annual charges to be collected as a simple contract debt in any court.

Section 66A(6) to section 66A(9) requires a provider to notify the Authority within 2 working days if a programme default event has occurred. Such a notification shall include:

- (a) details of the circumstances under which the programme has ceased to be provided;
- (b) details of the learners enrolled on the programme;
- (c) details of the programme no longer provided;
- (d) an indication of the providers intention to discharge any of its obligations towards the learners.

The provider is required to notify the learners enrolled on the programme at the same time.

Section 66A(10) provides for Ministerial regulations to govern a notice by a provider in relation to a programme default event.

Section 66A(11) to section 66A(13) provide for an offer from an alternative provider with a similar programme and an acceptance of such an offer by a learner within a prescribed timeframe.

Section 67 Obligations on providers to furnish information enrolled learners

Section 67(1) specifies the information that a provider must give to a learner before accepting any payment in respect of a programme. This includes:

- (a) where completion of the programme entitles the learner to an award:
 - (i) the name of the awarding body or awarding bodies making the award;
 - (ii) the title of the award;
 - (iii) the level of the award on the Framework; and
 - (iv) the award type – Major, Minor, Special Purpose, Supplemental.
- (b) where completion of the programme by the learner does not lead to an award, this fact must be stated;
- (c) how access, transfer and progression procedures under section 56 apply to the programme, if relevant; and
- (d) details of the learner protection arrangements in place.

Section 67(2) requires a provider, to whom *section 67(1)* applies, to notify the enrolled learner in writing of any change in the information previously provided within 14 days of becoming aware of the change.

Section 67(3) states that a provider that fails to comply with *section 67(1)* and/or *section 67(2)* commits an offence.