



QQI

Quality and Qualifications Ireland
Dearbhú Cáilíochta agus Cáilíochtaí Éireann

SECTION 3.1

Green Paper on Protection for Enrolled Learners

FOR CONSULTATION

QQI welcomes your views.

If you have suggestions regarding any aspect of the content of this proposed Policy Document please use the *Questions and Comments* area which appears immediately after it.

PLEASE NOTE:

7 JUNE 2013

CLOSING DATE FOR SUBMISSIONS

SECTION 3.1

Green Paper on Protection for Enrolled Learners

3.1.1 Introduction

This Green Paper is intended to inform stakeholders of the new legislative requirements for the protection of enrolled¹ learners (PFEL); to set out the interim arrangements for PFEL and to look at options for transitioning inherited and transitional PFEL arrangements over to the new QQI policies and procedures.

The outline for a QQI PFEL policy is set out in the 2012 Act (see Section 3.1.4 below), and so there are fewer options associated with this function than with other policy areas. Interpretations contained in this paper, such as that arrangements for PFEL must be on a programme-by-programme basis, are based on initial legal advice received by QQI on the implementation of the legislation.

3.1.2 Rationale

PFEL was included as a feature in the 1999 Act arising from concerns about certain private providers ceasing operations suddenly and leaving learners unable to finish a programme of study, or to have their fees refunded. It has been carried into Part 6 of the 2012 Act with some amendments. The purpose of this legislative provision is to ensure that learners enrolled on a programme are not disadvantaged in the event of the programme ceasing prior to completion. The 2012 Act seeks to ensure that learners have every opportunity to complete a programme leading to an award or, in the event that completion of the programme is not possible, that learners are refunded the monies they have most recently paid, or that have been paid on their behalf. The 2012 Act also seeks to ensure that learners are furnished with adequate and accurate information about the programme of education and training they wish to pursue and the safeguards that are in place in the event that the programme ceases prior to completion by learners. To reinforce this, the 2012 Act gives specific mention to 'Protection of Enrolled Learners' in Part 6 (Sections 64-67), and outlines the requirements for compliance by the provider and by QQI. Within the 2012 Act, PFEL

¹ An enrolled learner is defined in the 2012 Act as a person who is enrolled in a programme of education and training.

refers only to programmes of three months duration or more where fees have been paid by, or on behalf of, the learner.

3.1.3 PFEL Required Providers

The 2012 Act extends the requirement for PFEL to all private and not-for-profit providers, including those with charitable status. Not-for-profit providers were not required to have PFEL under the 1999 Act.

3.1.4 Legislative Requirements

Sections 64 and 65 of the 2012 Act stipulate that a provider shall put arrangements in place for the protection of enrolled learners on programmes of three months duration or more where moneys have been paid by, or on behalf of the learner, to the provider for a programme of education and training. These arrangements apply where:

- The provider does not provide the programme for any reason including by reason of insolvency or winding up of that provider, or:
- Enrolled learners have begun, but not completed the programme and the provider ceases to provide the programme before that programme is completed for any reason, including by reason of the insolvency or winding-up of that provider.

The provider shall submit details in writing to QQI of the arrangements the provider has in place when:

- Making an application for validation of a programme of education and training.
- Submitting a request for delegation of authority (DA) to make an award in respect of a programme of education and training, or:
- Notifying QQI of a proposal to make an additional award(s) in respect of a class of programme for which DA was granted, but which was not specified in the original request for delegation of authority to make awards.

The “arrangements in place” comprise:

- An agreement between the provider of the programme and at least two other providers that an enrolled learner may transfer to a similar programme of those other providers, or:

- Where the provider considers, with the agreement of QQI, that it is not practicable to comply with the above, that provider has arrangements in place which enable that provider to refund to an enrolled learner, or to the person who paid the moneys on behalf of the enrolled learner, the moneys most recently paid in respect of the programme concerned for:
 - Tuition fees
 - Registration fees
 - Examination fees
 - Library fees
 - Student services fees
 - Any other fees which relate to the provision of education, training and related services.

In accordance with Section 66 of the 2012 Act, QQI, without prejudice to the obligation of a provider to have arrangements in place under Section 65, may request any relevant provider to assist QQI in its reasonable efforts to assist the enrolled learners affected by the cessation to find a programme of education and training with another provider which will enable them to complete the education and training commenced with the former provider. Upon receipt of a request under subsection (2), the relevant provider concerned shall assist QQI in so far as it is practicable to do so.

Section 67(1) of the 2012 Act, requires that providers make certain information available to learners in writing, before commencing a programme of education and training and before accepting any payment from, or on behalf of, an enrolled learner in respect of the programme:

- Where successful completion of the programme by the learner entitles the learner to an award:
 - The name of the awarding body making the award.
 - The title of the award.
 - Whether the award is recognised within the NFQ, and if so:
 - The level of that recognition.
 - Whether the award is a Major, Minor, Special Purpose or Supplemental award as identified within the NFQ.
- Where successful completion of the programme by the learner does not entitle the learner to an award, that fact should be made known to the learner.

- Where the provider is required to have procedures for access, transfer and progression in place under Section 56, a statement of how those procedures apply to that programme should be available.
- Where the provider is required to have PFEL arrangements in place under Section 65 of the 2012 Act, details of the arrangements the provider has in place should be made available.

Section 67(2) of the 2012 Act requires providers to notify the enrolled learner in writing of any change in the information notified to the learner prior to enrolment within 14 days of becoming aware of that change. A provider who fails to comply with Section 67(1) or (2), or who, in purported compliance with subsection (1) or (2), provides an enrolled learner with information which is false or misleading in a material respect, commits an offence.

Whilst the 2012 Act is very clear regarding to whom PFEL applies; when and how, there remain questions on how the legislation is to be interpreted e.g. how are “three months duration” and “monies most recently paid” to be defined; legal advice is required to assist in arriving at such definitions, as well as in providing further clarity on QQI and providers’ obligations in respect of PFEL.

Meeting the detailed legislative requirements of PFEL and ensuring that an optimal model that leads to the protection of learners in the State is developed necessitates exploring a range of policy options. These include linking PFEL into other QQI policy areas and processes, considering arrangements with consortia, and grouping of programmes.

3.1.5 Policy Connections and Dependencies

The 2012 Act requires that a provider has PFEL in the following circumstances:

- When a provider seeks to have a programme validated [65 (1)(a); 45(7)(c); 52(3)(c)].
- When delegated authority (DA) is sought to make awards [65(1)(b) and (c);(53)(4)(a)(iii)].
- Where a proposal is submitted to QQI in respect of an additional award(s) in a class of programmes for which DA has been already granted, but which was not listed in the original application for DA. [65(1)(c)].

PFEL is also required in the context of the International Education Mark (IEM) [60(6)(a); 60(7)].

Requirements under Section 67 of the 2012 Act pertain to information that must be supplied by the provider to learners in advance of enrolling learners on a programme or accepting fees, including information on the access, transfer and progression arrangements in place for the programmes. As such, QQI policy for PFEL connects with QQI policy for validation, DA, access transfer and progression and the IEM, as well as any policy developed regarding information provision to learners.

Given that the circumstances of any programme and provider may change over the course of the lifespan of a programme, it is conceivable that PFEL arrangements put in place at the time of validation and/or delegation of authority to make awards may no longer be adequate. To ensure the on-going appropriateness of PFEL arrangements, it is likely that PFEL will be an matter which will require monitoring.

FET Awards Council policy allowed for the possibility of a fee being charged for administering PFEL agreements, but in reality no fee was ever charged. The HET Awards Council did not charge a fee in this area. The 2012 Act does not provide for fees to be payable to QQI in respect of PFEL. Rather providers must pay a fee in respect of the functions where PFEL is required: Validation, DA and IEM. Therefore, when calculating the fee to be charged in respect of these services, the cost of administering the associated PFEL agreements is also likely to be considered.

3.1.6 FET Awards Council and HET Awards Council PFEL Policies and Procedures and Issues Arising

Under the 1999 Act, PFEL for providers was a condition of validation. As a consequence, both the FET and HET Awards Councils developed PFEL policies and procedures. The Councils developed different policies and procedures, which reflected the context of the sectors in which they operated (capacities, types of providers etc.). The FET Awards Council PFEL policy was updated in 2011 and is explicit and detailed in its requirements of providers.

The primary differences between the requirements for PFEL under the 1999 Act and under the new legislation are:

- The 2012 Act extends the requirement for PFEL to those private and not-for-profit, providers, including those with charitable status, who were previously not required to have PFEL under the 1999 Act.
- Monies that must be refunded now include registration fees, examination fees, library fees, student services fees, and any other fees which relate to the provision of education, training and related services in addition to tuition fees.
- Arrangements for PFEL are now required in the context of applications to QQI for DA by providers other than those exempted under the legislation (see Section 3.1.3.1 above).
- Arrangements for PFEL are required in the context of the IEM.
- All relevant providers (not just those who have an obligation under the 2012 Act to put specific arrangements for PFEL in place) have an obligation, notwithstanding any individual PFEL arrangements in place, to assist QQI in the accommodation of learners who have been displaced through the cessation of a programme.

Fundamentally, however, the core requirements around PFEL remain the same i.e. that providers put arrangements for PFEL in place on a programme-by-programme basis for programmes of three-month duration or longer where moneys have been paid by, or on behalf of the learner. These arrangements consist of “academic matching” with two other providers or making financial arrangements for the refund of monies most recently paid. Providers must still provide information to learners on the programme, the award to which it leads and the PFEL arrangements in place, although the extent of the information that needs to be provided is now more detailed (see Section 3.1.4 above).

Former FET and HET Awards Council providers have expressed concerns around the difficulties experienced in finding and making arrangements with two other providers and the view has been expressed that this is an anti-competitive requirement. According to provider feedback, this has been especially difficult under the FET Awards Council PFEL policy, whereby providers seeking to have programmes validated under the CAS (Common Awards System), must submit their programmes for validation simultaneously with the providers with whom they propose to put academic matching arrangements in place. Feedback has also indicated that, in the current financial environment, securing a bank bond or another financial guarantee is difficult and costly.

It was the experience of both FET and HET Awards Councils that assessing and monitoring the viability and adequacy of PFEL arrangements is very resource intensive. There are

concerns over the capacity of nominated providers in academic matching arrangements to take on learners. This is particularly the case where global academic matching arrangements are in place (i.e. when two or more providers have a mutual agreement(s) to cover the entirety of each other's provision for the purposes of PFEL, as was the case with some HET Awards Council providers). In general, it was the experience of both Councils that when PFEL had to be activated, the existing PFEL agreements were insufficient (provider capacity changes over time / providers for a multitude of reasons may not be able to take all or any of the agreed learners at a given point in time), and the Councils successfully called upon other providers to assist in the placement of learners, something which the 2012 Act explicitly provides for (Section 66).

Another issue arising in the experiences of FET and HET Awards Councils administering these PFEL policies is with gaining access to learner records (including assessment information and material) and programme material (intellectual property), when a problem with a programme arises and PFEL arrangements need to be activated. There was also some concern that onerous PFEL requirements may negatively influence provider behaviour by driving providers to keep programmes within the three month duration requirement and/or offer programmes and accept fees on a module-by-module basis.

3.1.7 Interim Procedures for meeting PFEL requirements

Validation has been open to former FET Awards Council providers since the establishment of QQI, and has recently been re-opened to former HET Awards Council providers. Some of these providers have had arrangements for PFEL in place under the 1999 Act. Some of those who were not required to put arrangements for PFEL in place under the 1999 Act are now required to do so, (as outlined in Section 3.1.4 above). On the basis of equity and fairness, QQI has taken the decision to allow providers who do not currently have arrangements for PFEL in place, but who are PFEL required under the 2012 Act, to continue to have access to QQI awards. However, in order to ensure that there are sufficient safeguards for current learners undertaking programmes leading to QQI awards, QQI has put in place interim procedures for PFEL until such time as new policy and procedures for PFEL have been developed. Under these arrangements all providers (with the exception of those expressly exempt in the 2012 Act (see Section 3.1.3.1 above)) to whom validation of programmes leading to QQI awards is open (i.e. former FET and HET Awards Council providers) offering programmes of three months duration or longer and where fees are paid by, or on behalf of the learner, are required to put arrangements for PFEL in place.

The current requirements for former FET and HET Awards Council providers who had PFEL in place under the 1999 legislation are that:

- PFEL arrangements must be in line with former [FET](#) and [HET](#) Awards Council PFEL policies and procedures on a programme-by-programme basis.
- PFEL arrangements must be in place when:
 - Seeking to have a programme validated by QQI.
 - At the time a programme is reviewed by QQI.

Former FET and HET Awards Council providers who were not required to have PFEL in place under the 1999 Act, but who are subject to PFEL requirements under the 2012 Act must now put PFEL arrangements in place when:

- Seeking to have a programme validated by QQI.
- At the time a programme is reviewed by QQI.

This requirement does not apply to existing validated provision; i.e. this requirement does not apply retrospectively to programmes already validated by the FET or HET Awards Councils. It will however apply when those previously validated programmes become subject to review by QQI.

The PFEL arrangements that are currently relevant are those articulated in the former FET and HET Awards Council policies on protection for learners and must be applied on a programme-by-programme basis.

On completion of QQI PFEL policy development, a schedule and process will be established for transitioning existing PFEL arrangements to meet the new PFEL policies and procedures in line with requirements under the 2012 Act.

There are three main categories of provider to whom a new PFEL policy will apply and two to whom interim procedures apply as follows:

1. Existing Providers → PFEL in place under 1999 Act → validation / programmatic review under interim QQI procedures for PFEL → new PFEL policy published → transition schedule agreed → provider moved over.

2. Existing FET or HET Awards Councils Providers → No PFEL under 1999 Act, but PFEL under 2012 Act → validation / programmatic review under interim QQI procedures for PFEL → new PFEL policy published → transition schedule agreed → provider moved over
3. New Providers → PFEL under 2012 Act → validation under new QQI policies and procedures for validation and PFEL

3.1.8 Protection for Enrolled Learners - Options for consideration

There are two significant options for transitioning existing PFEL arrangements put in place under FET and HET Awards Councils and those put in place under the interim QQI arrangements outlined above over to the new QQI policies and procedures:

OPTION 1 Transition all PFEL arrangements simultaneously.

All existing PFEL arrangements are transitioned at the same time. Under this option, providers are given a set period of time (e.g. three months) from the point-in-time at which the new PFEL policies and procedures are published in order to ensure that their PFEL arrangements accord with the new requirements.

Advantages

- All providers (new and existing) would be operating under the same requirements for PFEL, which may be considered more equitable (no one is operating under a more or less onerous system than anyone else).
- Having all providers operating under the same policies and procedures may provide more clarity for learners around what to expect in terms of PFEL for programmes of education and training and related information provision.
- Administrative oversight of PFEL may be more streamlined for QQI where one system is in place for all, rather than needing to operate multiple systems simultaneously.

Disadvantages

- Providers would need adequate notification of the schedule for transitioning to the new policies in order to have time to organise and put new arrangements for PFEL in place.
- Simultaneously transitioning the very large number of PFEL arrangements in place for all of QQI's existing providers would be very resource intensive for QQI and would take a period of time.

OPTION 2 Transition PFEL Arrangements on a “Natural Life-cycle Basis”.

PFEL arrangements are transitioned as per the natural life-cycle of the programme and/or the PFEL arrangements that are in place i.e. at the point of programmatic review (essentially a re-validation), or when the PFEL arrangements lapse, such as when financial arrangements come up for renewal or when the arrangements with alternate providers are no longer adequate.

Advantages

- Providers would have a greater lead-in time to putting new arrangements for PFEL in place.
- This option would be less resource intensive for QQI at any given point in time.

Disadvantages

- This option may be considered by some to be less equitable as some providers may be operating under more or less onerous policies and procedures than others.
- In the case of former HET Awards Council providers operating with “blanket alternate cover” with another provider, existing PFEL arrangements may be inadequate and this option allows these inadequacies to continue for longer than option 1.
- Learners may be disadvantaged by the lack of conformity (and therefore potentially clarity) in PFEL requirements for providers.
- From QQI's perspective, there is an administrative challenge in operating multiple systems of PFEL simultaneously.

3.1.9 New PFEL Policies and Procedures

As the 2012 Act links PFEL to validation, new QQI policy and procedures for PFEL need to be in place when new validation policy and procedures are established. It is proposed that the new PFEL policy and procedures be ready for publication in September. It will thereby make QQI awards accessible to new providers from that point in time, under the process for Provider Access to Accreditation outlined in Section 2.

Options

In developing new policies and procedures, QQI must give consideration to the possibility of allowing providers to partake in consortium arrangements, so long as these arrangements do not otherwise contravene the requirements of the 2012 Act, as set out in QQI policy. The appropriateness of any such arrangement would need to be determined on a case-by-case basis.

Advantages

- Appropriate consortium arrangements may alleviate the difficulties faced by providers in finding alternate providers for their provision or in securing financial arrangements for the refund of monies paid by or on behalf of learners.

Disadvantages

- Consortium arrangements may be subject to sector-wide risks; if all members of a consortium face difficulties at the same time, the ability of the consortium to meet its PFEL obligations may be seriously diminished or no longer be possible.

Questions and Comments

SPECIFIC CONSULTATION QUESTION

Q3.1.A The question arises whether “protection for enrolled learners” is an appropriate label for this function. Does PFEL, as a label, communicate the extent and limitations of the coverage afforded to learners?

GENERAL CONSULTATION QUESTIONS

Q3.1.B Are there other options that have not been considered in this Green Paper?

Q3.1.C Are there advantages/disadvantages that have not been identified for each option?

Q3.1.D Do you have any preferences among the options?

option 1

option 2

Q3.1.E Do you have any comments on the issues raised in the Green Paper?

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Thank you for your time!