



**QQI**

Quality and Qualifications Ireland  
Dearbhú Cáilíochta agus Cáilíochtaí Éireann

# Protection of Enrolled Learners: Protocols for the Implementation of Part 6 of the 2012 Act

QQI, an integrated agency for quality and qualifications in Ireland

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# Protection of Enrolled Learners: Protocols for the Implementation of Part 6 of the 2012 Act

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## 1 SUMMARY

Quality and Qualifications Ireland (QQI) was established in November 2012 by the Qualifications and Quality Assurance (Education and Training) Act 2012 (the 2012 Act).

The 2012 Act sets out (in Part 6) legal requirements for QQI and providers of education and training (providers) regarding the Protection of Enrolled Learners (PEL).

This document sets out the protocols which will enable QQI to implement its functions and facilitate providers' compliance with their legal obligations for PEL.

QQI policy is developed in consultation with stakeholders. QQI policy is adopted by the Board and implemented by the executive accordingly.

## 2 INTRODUCTION

The protocols set out in this document have been developed to facilitate providers in the fulfilment of their legal obligations with regard to PEL. The 2012 Act sets out these obligations and establishes that it is the responsibility of providers to ensure that there are adequate arrangements in place for PEL on specified programmes; it is therefore a criterion in the context of programme validation policy. In all such cases, the point of reference will be the original validation requirements.

Notwithstanding the responsibility of providers to have arrangements for PEL in place, QQI may also request that a relevant provider assists in the accommodation of learners affected by the cessation of a programme.

These protocols apply in various ways to different categories of provider:

- a. All providers regardless of their relationship with QQI must make certain categories of information available to learners (Protocols 3.2 apply).
- b. Unless specifically exempted (see list below), all private, voluntary and public providers of QQI validated programmes (or those with delegation of authority to make awards) that charge fees and offer programmes of three months or longer must demonstrate compliance with the legal requirements for PEL (Protocols 3.2, 3.3, 3.4, 3.5 and 3.6 apply). These protocols apply to these providers when:
  - i. Submitting programmes for validation
  - ii. An existing validated programme is subject to review of validation by QQI
  - iii. Seeking delegated authority<sup>1</sup> to make an award in respect of a validated programme
  - iv. Submitting a proposal for the inclusion of an additional award(s) under delegated authority

<sup>1</sup> The 2012 Act extends the right to seek delegation of authority to make awards to providers who fulfil the regulations set out by the Minister for Education and Skills in this area. Such regulations have yet to be established.



- c. All relevant providers (including public providers) shall, if requested, assist QQI in the accommodation of learners affected by the cessation of a programme (Protocols 3.6 apply).

The following providers are exempted under the legislation from the specific requirement to put arrangements in place for PEL (Protocols 3.3, 3.4 and 3.5) for programmes offered:

- a. A previously established university.
- b. An educational institution established as a university under Section 9 of the Act of 1997.
- c. The Dublin Institute of Technology.
- d. An Institute of Technology.
- e. FÁS (SOLAS, when established).
- f. The National Tourism Development Authority (Fáilte Ireland).
- g. Teagasc.
- h. An Bord Iascaigh Mhara.
- i. An educational or training institution established and maintained by an Education and Training Board (ETB).
- j. A recognised school.

Table 1: Summary of obligations for different categories of providers	Information to learners	Put specific PEL arrangements in place for PEL-required programmes	Assist in the accommodation of affected learners
Protocols:	3.2	3.3 - 3.5	3.6
All relevant providers, as defined in the 2012 Act	Yes	No	Yes
Private, voluntary and public providers of QQI validated programmes or with delegated authority (unless exempt) who charge fees and offer programmes of three months or longer duration	Yes	Yes	Yes
Providers who are not relevant providers as defined in the 2012 Act	Yes	No	No

## 2.1 Legal Interpretation

Protection of Enrolled Learners is a feature of the 2012 Act. A similar provision was set out in the Qualifications (Education and Training) Act 1999 (the 1999 Act), which the 2012 Act repealed and replaced.

The legal requirement ensures that learners enrolled on a programme, of longer than three months duration and where fees have been paid, are not disadvantaged in the event of the programme ceasing prior to completion.

The 2012 Act seeks to ensure that:

- Learners have the opportunity to complete a programme leading to an award, or
- Learners are refunded the moneys most recently paid if a programme ends before they complete it, and
- Learners are provided with adequate and accurate information about the programme that they wish to pursue and about the protection in place for them in the event that the programme ceases prior to their completion.

To reinforce this, the 2012 Act specifically mentions PEL in Parts 5 and 6 and outlines the requirements for compliance by providers. Within the 2012 Act, “Protection of Enrolled Learners” refers only to programmes of three months’ duration or more where fees have been paid by or on behalf of learners.

Under the 2012 Act, “acceptable arrangements for PEL” means either arrangements with at least two other providers to facilitate the transfer of learners to similar programmes or, where this is not practicable, arrangements for the refund of moneys most recently paid.

For the purposes of these PEL protocols, QQI has (following legal advice) interpreted the terms used in the 2012 Act as follows:

### Three months’ duration:

Three calendar months, regardless of mode or nature of delivery or volume of learning. This refers to the period from the commencement of instruction to the point when learners have been assessed for the purposes of completing the programme and the result of assessment have been confirmed by the provider<sup>2</sup>.

### A similar programme:

One that leads to the same award type<sup>3</sup> in the same field of learning

<sup>2</sup> The point at which the learner is no longer vulnerable to the cessation of the programme.

<sup>3</sup> An award-type is a class of named awards sharing common features and NFQ levels. At each level in the Framework there is at least one award-type. Each award-type has its own award-type descriptor. For further information please see: [Determinations for the Outline National Framework of Qualifications](#)



at the same NFQ level, and with broadly similar learning outcomes. A programme which meets these requirements may be deemed as similar regardless of differences in mode, duration or place of delivery. In all such cases, the point of reference will be the original validation requirements.

#### Moneys most recently paid:

For programmes of up to one year in duration, a provider must have adequate arrangements in place to meet a claim for refund in respect of the full duration of such programmes. In respect of programmes the duration of which is greater than the equivalent of one year, and where fees and other payments are required to be made by the learner for each year, a provider must have adequate arrangements in place to meet a minimum of one year's provision of claim for refund available at all times. In summary, learners may seek a refund of up to one year of moneys paid.

A glossary of terms is provided at the end of this document.

## 3 PROTOCOLS

### 3.1 General Protocols

- 3.1.1 All providers must make certain programme and award-related information available to learners prior to enrolling them or accepting payment for an education and training programme.
- 3.1.2 Relevant providers, other than those exempted under the 2012 Act (exemptions listed in the Introduction), must agree their overall policy and procedures for the Protection of Enrolled Learners (PEL) with QQI as part of their quality assurance agreement with QQI. Such providers must also have specific PEL arrangements in place for each programme of three months' duration or more where fees have been paid by, or on behalf of, the learner and for which validation or delegation of authority to make an award is sought from QQI.
- 3.1.3 All relevant providers, including public providers, have a duty to assist QQI (in so far as is practicable) in the accommodation of learners affected by the cessation of a programme, if requested, and this shall be reflected in their quality assurance procedures established under the 2012 Act.
- 3.1.4 Exempt providers should consider the PEL implications when entering into collaborative and joint awarding arrangements with PEL-required providers. PEL should be addressed in the contractual arrangements underpinning collaborations.

3.1.5 Learners will be protected by PEL arrangements from the time that fees are paid, in part or in whole, for enrolment on a programme of education and training of three months' duration or longer until they have received certification for the learning achieved or until they have been legitimately excluded from the programme.

## 3.2 Information for Learners

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3.2.1 All providers must make the following information publicly available and accessible on their websites and in other published material before enrolling learners or accepting any payment from, or on behalf of, an enrolled learner for an education and training programme:

- a. The name of the awarding body (or bodies) making the award
- b. The title of the programme and the award to which it leads
- c. Whether the award is recognised within the National Framework of Qualifications (NFQ), and if so:
  - i. The level of that recognition within the NFQ
  - ii. Whether the award is a Major, Minor, Special Purpose or Supplemental award as identified within the NFQ
- d. That successful completion of the programme by the learner does not lead to an award, but to a certificate of completion or similar, where that is the case
- e. Where the provider is required to have procedures for access, transfer and progression in place under Section 56 of the 2012 Act, a statement of how those procedures apply to that programme
- f. The details of the arrangements for PEL that the provider has in place, in accordance with Section 65(4) of the 2012 Act, or where no PEL arrangements are in place, that this fact be made clear

Relevant protocols should be adhered to.

3.2.2 Providers must notify enrolled learners in writing of any change in the information notified to the learners within 14 days of becoming aware of that change.

3.2.3 Under Section 67 (3) of the 2012 Act, it is an offence for a provider to fail to notify learners of the information set out under sections 3.2.1 and 3.2.2 of these protocols or to provide false or misleading information in purported compliance with these sections.

3.2.4 Relevant providers must publish their PEL arrangements and prospective learners must be notified of the PEL arrangements before they begin a programme. These should include either:





- a. The names and contact details of the alternate providers and the names of the alternate programmes

or

- b. A summary of the refund arrangements that are in place

And

- c. A statement that in the event of a PEL arrangement being implemented, learner data may be shared with alternate providers and QQI

### 3.3 Arrangements for PEL

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**3.3.1** The provider must submit details in writing to QQI of the arrangements in place for PEL when:

- a. Applying to QQI for programme validation
- b. Submitting a request to QQI for delegated authority to make awards
- c. Notifying QQI of a proposal to make an additional award(s) for a class of programme for which delegated authority was granted, but which was not specified in the original request for delegated authority

**3.3.2** The “arrangements in place” comprise:

- a. An agreement between the provider of the programme and at least two other providers<sup>4</sup> that an enrolled learner may transfer to a similar programme of those other providers; or
- b. Where the provider considers (with the agreement of QQI) that it is not practicable to comply with regulation 3.3.2.a), that arrangements are 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 for the programme concerned for:
  - i. Tuition fees
  - ii. Registration fees
  - iii. Examination fees
  - iv. Library fees
  - v. Student services fees
  - vi. Any other fees relating to the provision of education, training and related services

Arrangements which facilitate learners to complete their studies are preferred where possible.

<sup>4</sup> While arrangements must be in place with at least two other providers, please note that arrangements are not limited to two providers, but may be with as many providers as is necessary to accommodate learners.

### 3.3.3 PEL arrangements will be activated when:

- a. A provider fails to provide a programme of education and training of three months' duration or longer where moneys have been paid for any reason (including the insolvency or the winding up of that provider), or where QQI withdraws programme validation
- b. Enrolled learners have begun, but not completed, a programme of education and training of three months' duration or longer where moneys have been paid and the provider ceases to provide the programme before that programme is completed for any reason (including the insolvency or the winding up of that provider), or on account of QQI withdrawing programme validation

## 3.4 Process for Demonstrating Compliance with PEL Protocols

3.4.1 Providers must demonstrate compliance with Part 6 of the 2012 Act by informing QQI in writing of the arrangements in place for PEL and setting out how the provider has satisfied itself that the arrangements are adequate and meet the legal requirements as set out in these protocols. Specifically, the following information and documentation should be supplied for each relevant programme of education and training to which PEL applies:

- a. Details of the arrangements for learners to transfer to similar programmes offered by at least two alternate providers
- b. Confirmation that the alternate providers are separate legal entities and are financially independent from the applicant provider
- c. Confirmation that the named alternate providers have the capacity to meet their obligations under the PEL arrangement, including specifying the exact number of learners that may be accommodated on a programme in accordance with the PEL arrangement; or
- d. Where the transfer of learners to alternate programmes is not practicable, the reasons this is the case and details of the financial arrangements in place for the refund of moneys to learners, or to those who have paid moneys on their behalf. Financial arrangements must include provision for distributing funds to learners and the fund must cover the cost of such a provision
- e. How the provider has satisfied itself that the PEL arrangements are adequate and meet the legal requirements set out in these protocols
- f. A stated procedure for alternate providers and QQI to access learner records including fee payment records and assessment material (including assignment briefs and marking criteria etc.) in the event of the provider ceasing to deliver a programme or ceasing trading entirely

3.4.2 PEL arrangements must be duly authorised by the appointed representatives of the providers in question.

3.4.3 Providers must ensure that:



- a. At any time, the number of enrolled learners on a programme must not exceed the stated maximum number in the PEL arrangement agreed for that programme.
- b. Each time a programme begins, the provider must contact the alternate providers to ensure that the protection arrangements are current and sufficient.

3.4.4 Providers must notify learners in writing of any change in the arrangements agreed for PEL within 14 days of becoming aware of that change.

3.4.5 Providers must notify alternate providers, learners and QQI as soon as practicable when the need to implement a PEL arrangement arises. In such an event, named alternate providers must activate their arrangements to accommodate learners.

3.4.6 If:

- An alternate provider ceases to offer the alternate programme or
- The alternate programme changes materially so that it may no longer be claimed to be similar or
- It no longer reflects the PEL arrangements that were made known to the learners and QQI

The alternate provider must inform the provider that their PEL arrangements are no longer valid. A new arrangement which complies with these protocols must be put in place, and learners and QQI must be advised of this within one calendar month. If a new PEL arrangement cannot be secured the provider must immediately stop enrolling new learners onto the programme.

3.4.7 QQI will maintain a public record of PEL arrangements of which it has been notified on its national database of programmes and awards.

## 3.5 Procedure for Activating PEL Arrangements

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3.5.1 PEL arrangements are activated in the event that:

- a. A provider ceases trading while learners are enrolled on programmes
- b. A provider ceases offering a specific programme while learners are enrolled on the programme
- c. QQI withdraws validation of the programme while learners are enrolled

3.5.2 If PEL arrangements need to be activated (either with alternate providers or a financial arrangement), the provider must immediately inform QQI and the alternate providers. The provider must then provide formal notification in writing to QQI and to either the named alternate providers or to the relevant financial institution. Learners and QQI must be informed of arrangements for the draw-down of funds.

3.5.3 The provider, or its duly appointed representative, must devise a 'plan of action for enrolled learners' to be communicated to learners. Confirmation that this has taken place must be given in writing to QQI. The provider must contact each enrolled learner immediately, informing them of the situation, and must provide each learner with the plan of action for completion of the programme and/or arrangements involving alternate providers or for the refund of monies paid.

### 3.6 Duty to Assist QQI in the Accommodation of Affected Learners

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3.6.1 The responsibility for Protection of Enrolled Learners lies with providers. Where a situation arises where a provider's arrangements prove inadequate QQI may request any relevant provider to assist in the accommodation of such learners in so far as is practicable. QQI will only make such a request where it becomes strictly necessary.

## 4 REVIEW OF THIS POLICY

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The protocols for implementation of Part 6 of the 2012 Act will be reviewed two years after implementation or earlier if necessary.

## 5 PEL PROTOCOLS: GLOSSARY OF TERMS

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### A similar programme:

One that leads to the same award type in the same field of learning at the same NFQ level, and with broadly similar learning outcomes. A programme which meets these requirements may be deemed as similar regardless of differences in mode, duration or place of delivery. In all such cases, the point of reference will be the original validation requirements

### Award Type:

A class of named awards sharing common features and NFQ levels. At each level in the Framework there is at least one award-type. Each award-type has its own award-type descriptor.

### Enrolled learner:

A learner who has enrolled in a programme of education and training.



### Moneys most recently paid:

For programmes of up to one year in duration, a provider must have adequate arrangements in place to meet a claim for refund in respect of the full duration of such programmes. In respect of programmes the duration of which is greater than the equivalent of one year, and where fees and other payments are required to be made by the learner for each year, a provider must have adequate arrangements in place to meet a minimum of one year's provision of claim for refund available at all times. In summary, learners may seek a refund of up to one year of moneys paid.

### Programme of education and training:

A process by which a learner acquires knowledge, skill or competence and includes a course of study, a course of instruction and an apprenticeship.

### Provider:

A person who provides, organises or procures a programme of education and training.

### Recognised school:

Means a school that is recognised by the Minister for Education and Skills under section 10 of the Education Act 1998.

### Relevant programme:

A programme to which interim QQI PEL policy and related procedures applies i.e. a programme of three months or longer duration where monies have been paid by, or on behalf of, the learner.

### Relevant provider:

Means one of the following:

- 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 of the 2012 Act.
- f. A provider who has entered into an arrangement with an awarding body under Section 48 of the 2012 Act

- g. A provider to whom authority to make an award has been delegated under Section 53 of the Act
- h. A provider who is authorised to use the international education mark under Section 61 of the Act 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

A provider that is not one of the above is a non-relevant provider.

Three months' duration:

Three calendar months, regardless of mode or nature of delivery or volume of learning. This refers to the period from the commencement of instruction to the point when learners have been assessed for the purposes of completing the programme and the result of assessment have been confirmed by the provider.





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