

Appendix 6

Extracts from the Qualifications (Education and Training) Act 1999: Sections 8, 9, 23, 25, 26, 28, 29, 30, 43, 44.

8.—(1) The functions of the Authority are to do all things necessary or expedient in accordance with this Act to further the objects of the Authority. Functions of Authority.

(2) Without prejudice to the generality of *subsection (1)*, the Authority shall—

- (a) establish the policies and criteria on which the framework of qualifications shall be based,
- (b) review the operation of the framework of qualifications having regard to the objects specified in *section 7*,
- (c) establish, in consultation with the Further Education and Training Awards Council and the Higher Education and Training Awards Council, procedures for the performance by them of their functions and shall review those procedures from time to time,
- (d) determine the procedures to be implemented by providers of programmes of education and training for access, transfer and progression and shall publish those procedures in such form and manner as the Authority thinks fit,
- (e) ensure, in consultation with the Dublin Institute of Technology and universities established under *section 9* of the Act of 1997, that the procedures referred to in *paragraph (d)* are being implemented by them,
- (f) facilitate and advise universities in implementing the procedures referred to in *paragraph (d)* and from time to time and in any case not less than once in every five years, in consultation with An tÚdarás, review the implementation of those procedures by universities, and publish the outcomes of such a review in such form and manner as it thinks fit,
- (g) consult with and advise the Minister or any other Minister, as the case may be, on such matters in respect of its functions as the Minister or any other Minister may request or as the Authority sees fit, and
- (h) (i) liaise with bodies outside the State which make education and training awards for the purposes of facilitating the recognition in the State of education and training awards made by those bodies, and
(ii) facilitate recognition outside the State of education and training awards made in the State.

(3) The Authority, in the performance of its functions, shall—

- (a) inform itself of the education, training, skills and qualifications requirements of industry, including agriculture, business, tourism, trade, the professions and the public

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service, including the level of knowledge, skill or competence to be acquired by learners and promote practices in education and training which meet those requirements.

- (b) inform itself of practices outside the State in respect of matters relevant to its functions,
- (c) give effect to the policies relating to education and training which from time to time are established, and notified in writing to the Authority, by the Minister, or by any other Minister with the agreement of the Minister, following consultation with the Authority, and
- (d) consult, as it considers appropriate, with universities, the Higher Education and Training Awards Council, the Further Education and Training Awards Council, the Dublin Institute of Technology, recognised institutions, An Foras, CERT, Teagasc, An Bord Iascaigh Mhara, educational or training institutions established by a vocational education committee, other providers of education and training, persons, or bodies of persons, who represent employees of providers of education and training or who represent learners, An tÚdarás, the National Council for Curriculum and Assessment and such other persons or bodies of persons as the Authority considers appropriate, and the Authority shall consider the views, if any, of those bodies for the purpose of determining the procedures referred to in *subsection (2)(d)*.

Review by
Authority.

9.—(1) The Authority may from time to time review the performance by the Further Education and Training Awards Council or the Higher Education and Training Awards Council of its functions and may make such recommendations to the Council concerned in respect of that performance, as the Authority thinks fit.

(2) The Further Education and Training Awards Council or the Higher Education and Training Awards Council shall implement recommendations, if any, made by the Authority under *subsection (1)*.

(3) The Authority shall publish in such form and manner as it considers appropriate the results of a review under *subsection (1)*.

23.—(1) The functions of the Council shall be as follows:

- (a) to establish and publish, in such form and manner as it thinks fit, policies and criteria for—
- (i) the making of higher education and training awards, and
 - (ii) the validation of programmes of higher education and training,
- and to review such policies and criteria not less than once in every five years;
- (b) to determine standards of knowledge, skill or competence to be acquired by learners—
- (i) before a higher education and training award may be made by the Council or by a recognised institution to which authority to make awards has been delegated under *section 29*, or
 - (ii) who request from the Council recognition of an award made by a body other than the Council or a recognised institution to which authority to make awards has been delegated under *section 29*,
- (c) to make or recognise higher education and training awards given or to be given to persons who apply for those awards and who, in the opinion of the Council, have achieved the standard determined by the Council under *paragraph (b)*;
- (d) to monitor and evaluate the quality of programmes of education and training in respect of which awards are made or recognised under *paragraph (c)*;
- (e) to ensure that—
- (i) providers of programmes of education and training whose programmes are validated under *section 25*, and
 - (ii) recognised institutions to which authority to make awards has been delegated under *section 29*,
- establish procedures for the assessment of learners which are fair and consistent and for the purpose of compliance with standards determined by the Council under *paragraph (b)*;
- (f) to promote the higher education and training awards of the Council;
- (g) to facilitate and assist the Authority in carrying out its functions;

- (h) to consult with and advise the Minister or any other Minister, as the case may be, on such matters in respect of its functions as the Minister or any other Minister may request or as the Council thinks fit, and to inform the Authority of any such consultation and advice, and Pr.IV S.23
- (i) to do all such acts or things as are necessary or expedient for the purpose of the exercise of its functions.
- (2) The Council, in the performance of its functions, shall—
- (a) consult, as it considers appropriate, with providers of higher education and training or other persons or bodies,
- (b) following consultation with the Authority, inform itself of practices outside the State in respect of matters relevant to its functions,
- (c) following consultation with the Authority, inform itself of the education, training, skills and qualifications requirements of industry, including agriculture, business, tourism, trade, the professions and the public service, including the level of knowledge, skill or competence to be acquired by learners and promote practices in higher education and training which meet those requirements, and
- (d) ensure that procedures for access, transfer and progression determined by the Authority under *section 8(2)(d)* are implemented by—
- (i) providers of programmes of education and training whose programmes are validated under *section 25*, and
- (ii) recognised institutions to which authority to make awards has been delegated under *section 29*.
- (3) The Council may request—
- (a) a provider of programmes of education and training whose programmes are validated under *section 25*, or
- (b) a recognised institution to which authority to make awards has been delegated under *section 29*,

to assist the Council in forming an opinion as to whether a person has achieved the standard determined by the Council under *paragraph (b) of subsection (1)* for the purpose of making or recognising a higher education and training award under *paragraph (c) of that subsection*.

Validation of
programmes by
Council.

25.—(1) Subject to *subsections (2) and (3)*, a provider of a programme of education and training may apply to the Council for validation of that programme.

(2) (a) Subject to *paragraphs (b) and (c) and subsection (3)*, recognised institutions, An Foras, CERT, Teagasc and An Bord Iascaigh Mhara shall apply under *subsection (1)* to the Council to have all programmes of higher education and training which they provide, organise or procure validated by the Council.

(b) *Paragraph (a)* shall not apply to a programme of higher education and training in respect of which a recognised institution has authority delegated to it under *section 29* to make an award.

(c) Where a recognised institution has entered into arrangements or made arrangements under *section 5(1)(b)* of the Act of 1992, subject to the agreement of the Council and the Authority, *paragraph (a)* shall not apply to a programme of higher education and training provided by such recognised institution for such period, not exceeding five years from the commencement of this Part, as may be determined by the Council with the agreement of the Authority.

(3) Where a programme of higher education and training is organised or procured, in whole or in part, by a provider ("the first mentioned provider") and is provided, in whole or in part, by another provider ("the second mentioned provider"), the first mentioned provider shall consult with the second mentioned provider before making an application for validation under *subsection (1) or (2)*.

(4) The Council may, on receipt of an application under *subsection (1) or (2)*—

(a) subject to such conditions as it thinks fit, validate a programme of education and training where it is satisfied that the programme concerned meets the criteria determined by the Council under *paragraph (a)(ii) of section 23(1)*, or

(b) refuse validation.

(5) The conditions referred to in *subsection (4)(a)* shall include, but not necessarily be limited to, conditions requiring the provider concerned to—

(a) co-operate with and assist the Council, and the Authority where appropriate, in the performance of their functions,

(b) establish the procedures referred to in *section 23(1)(e)*,

(c) implement the procedures referred to in *section 23(2)(d)*,
and

- (d) provide such information as the Council may from time to time require for the purposes of the performance of the functions of the Council, including information in respect of completion rates. Pt.IV S.25

26.—(1) The Council may, at any time, review a programme of education and training validated under *section 25*. Withdrawal of validation.

(2) Following a review under *subsection (1)*, where the Council is of the opinion—

- (a) that a programme of education and training validated under *section 25* no longer meets the criteria determined by the Council under *paragraph (a)(ii) of section 23(1)*, or
- (b) that the conditions specified by the Council under *paragraph (a) of section 25(4)* are not being complied with, or
- (c) that there are other reasonable grounds for withdrawing its validation,

the Council shall inform the provider of the programme concerned, by notice in writing, of its opinion and the reasons for that opinion and the notice shall state that the provider may make representations to the Council in relation to that opinion not later than one month after the receipt of the notice by the provider.

(3) Where, after the expiration of one month from the service of the notice referred to in *subsection (2)* and after consideration of any representations made to the Council, the Council remains of that opinion, it may withdraw its validation of the programme concerned, by notice in writing addressed to the provider, from such date as it considers appropriate and having regard to the interests of the learners concerned and until such time as it may be satisfied of whichever of the following is appropriate—

- (a) that the programme concerned meets the criteria determined by the Council under *paragraph (a)(ii) of section 23(1)*, or
- (b) that the conditions specified by the Council under *paragraph (a) of section 25(4)* are being complied with, or
- (c) that the grounds for withdrawing validation referred to in *subsection (2)(c)* no longer exist.

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Quality assurance.

28.—(1) Subject to *subsection (6)*, as soon as practicable after the commencement of this Part and at such other times as the Council after consultation with the provider concerned thinks fit—

- (a) a provider of a programme of education and training whose programme has been validated by the Council under *section 25*, or
- (b) a recognised institution to which authority has been delegated under *section 29* to make awards in respect of a programme of higher education and training,

shall, having regard to existing procedures, if any, establish procedures for quality assurance for the purpose of further improving and maintaining the quality of education and training which is provided, organised or procured by that provider as part of the programme concerned and shall agree those procedures with the Council.

(2) Without prejudice to the generality of *subsection (1)*, the procedures established under that subsection shall include—

- (a) evaluation at regular intervals and as directed from time to time by the Council of the programme of education and training concerned, including evaluation by persons who are competent to make national and international comparisons in that respect,
- (b) evaluation by learners of that programme, and
- (c) evaluation of services related to that programme,

and shall provide for the publication in such form and manner as the Council thinks fit of findings arising out of the application of those procedures.

(3) The Council shall consider the findings arising out of the application of procedures established under *subsection (1)* and may make recommendations to the provider of the programme concerned which that provider shall implement.

(4) The Council shall, from time to time and as directed from time to time by the Authority, in consultation with the provider of a programme of education and training, review the effectiveness of the procedures established under *subsection (1)* and the implementation by the provider concerned of the findings arising out of the application of those procedures.

(5) The Council shall—

- (a) report to the Authority on, and
- (b) publish in such form and manner as the Authority thinks fit,

the results of a review under *subsection (4)* and shall include in a report or publication the views, if any, of the provider of the programme concerned.

(6) Where a programme of higher education and training is organised or procured, in whole or in part, by a provider ("the first mentioned provider") and is provided, in whole or in part, by another provider ("the second mentioned provider"), the first mentioned provider shall, in addition to the requirements specified in *subsection (1)*, in so far as the procedures to be established under that subsection relate to that part of the programme provided by the second

mentioned provider, agree those procedures with the second mentioned provider. Pt.IV S.28

CHAPTER II

Delegation of Authority

29.—(1) Subject to *subsection (2)*, a recognised institution may request the Council to delegate to it the authority to make higher education and training awards. Delegation of authority to make awards.

(2) Where a programme of higher education and training is organised or procured, in whole or in part, by a recognised institution and is provided, in whole or in part, by any other provider, the recognised institution shall consult with such other provider before making a request under *subsection (1)* for delegation of authority to make awards in respect of that programme.

(3) Upon receipt of a request under *subsection (1)*, the Council shall determine and publish, in such form and manner as it thinks fit, criteria for the purposes of this section and shall, in accordance with *subsection (4)*, review—

(a) the operation and management of the recognised institution concerned in relation to programmes of higher education and training provided, organised or procured by that recognised institution, and

(b) those programmes.

(4) In carrying out a review under *subsection (3)*, the Council shall implement the procedures agreed from time to time with the Authority which procedures shall include—

(a) evaluation by the recognised institution of—

(i) the operation and management of the recognised institution concerned in relation to programmes of higher education and training provided, organised or procured by that institution, and

(ii) those programmes.

(b) where the Council, with the agreement of the Authority, is satisfied with the result of the evaluation referred to in *paragraph (a)*, subsequent evaluation by such persons who have a particular knowledge and experience related to higher education and training, as the Council considers appropriate, including persons with relevant international experience, and

(c) publication, in such form and manner as the Council thinks fit, of a report of the findings of those evaluations.

(5) Where the Council is satisfied, with the agreement of the Authority, following a review under *subsection (3)*, that—

(a) the operation and management of a recognised institution in relation to programmes of higher education and training provided, organised or procured by the recognised institution, and

(b) those programmes,

meet the criteria determined by the Council for the purposes of this section with the agreement of the Authority, then the Council may delegate to that recognised institution the authority to make such higher education and training awards, subject to such conditions as it thinks fit, as the Council specifies by notice in writing to the recognised institution concerned and the Authority.

(6) The conditions referred to in *subsection (5)* shall include, but not necessarily be limited to, conditions requiring the recognised institution concerned to—

- (a) co-operate with and assist the Council, and the Authority where appropriate, in the performance of their functions,
- (b) establish the procedures referred to in *section 23(1)(e)*,
- (c) implement the procedures referred to in *section 23(2)(d)*, and
- (d) provide such information as the Council requires for the purposes of the performance of the functions of the Council, including information in respect of completion rates.

(7) The Council shall, for the purpose of determining the conditions referred to in *subsection (5)*, have regard, in particular, to programmes, if any, referred to in *subsection (2)*.

(8) A review which, at the commencement of this Part, has been or is being conducted on the direction of the Minister in relation to the delegation of authority to an institution established by or under section 3 of the Act of 1992 to make higher education and training awards, which following such commencement becomes a recognised institution, shall be a review for the purposes of this section where the Minister so determines and the Minister shall inform the Council, by notice in writing, of any such determination and may give such directions to the Council and the Authority, as he or she considers appropriate.

Review and withdrawal of delegated authority.

30.—(1) The Council shall from time to time as it thinks fit and in any case not less than once in every five years, or as directed from time to time by the Authority, review, in such manner as it thinks fit—

(a) the operation and management of a recognised institution, to which authority to make awards has been delegated under *section 29*, in relation to programmes of higher education and training provided, organised or procured by that institution, and

(b) those programmes.

(2) Where the Council, having carried out a review under *subsection (1)*, is of the opinion—

(a) (i) that the operation or management of the recognised institution concerned in relation to programmes of higher education and training provided, organised or procured by that recognised institution, or

(ii) that those programmes,

do not meet the criteria determined by the Council under Pt.IV S.30 *section 29(5)*, or

- (b) that the conditions specified by the Council under *section 29(5)* are not being complied with, or
- (c) that there are other reasonable grounds for withdrawing the authority to make awards delegated to that recognised institution under *section 29*,

it shall inform the recognised institution concerned, by notice in writing, of its opinion and the reasons for that opinion and the notice shall state that the recognised institution may make representations to the Council in relation to that withdrawal not later than three months after the receipt of the notice by the institution.

(3) Where, after the expiration of three months from the service of the notice referred to in *subsection (2)* and after consideration of any representations made to the Council, the Council remains of that opinion it may withdraw the authority to make awards delegated to the recognised institution under *section 29*, by notice in writing addressed to that recognised institution, from such date as it considers appropriate and until such time as it may be satisfied of whichever of the following is appropriate—

- (a) (i) that the operation and management of the recognised institution concerned in relation to programmes of higher education and training provided, organised or procured by that recognised institution, or
- (ii) that those programmes,

meet the criteria determined by the Council under *section 29(5)*, or

- (b) that the conditions specified by the Council under *section 29(5)* are being complied with, or
- (c) that the grounds referred to in *subsection (2)(c)* for withdrawing the authority to make awards no longer exist.

(4) A review under *subsection (1)* shall be carried out in accordance with such procedures as may be determined from time to time by the Council with the agreement of the Authority and those procedures shall provide for an appeal to the Authority against a decision to withdraw the authority to make awards delegated under *section 29*.

PART VII

PROTECTION FOR LEARNERS

Arrangements for protection of learners.

43.—(1) The Higher Education and Training Awards Council and the Further Education and Training Awards Council shall not—

- (a) validate a programme of education and training pursuant to *section 15* or *25*, as the case may be, or
- (b) make or recognise any award in respect of a programme of education and training,

being in either case a programme of a duration of three months or more, which is provided by a provider which intends to operate programmes of education and training on a commercial and profit-making basis, unless the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, is satisfied that the provider concerned has arrangements in place which make provision for learners where that provider ceases to provide the programme concerned.

(2) In this Part “arrangements in place” means—

- (a) that the provider of the programme concerned has arrangements in place with at least two other providers which provide that a learner may transfer to similar programmes provided by those other providers, or
- (b) in the case of a provider who considers, subject to the agreement of the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, that it is not practicable to have arrangements in place as specified in *paragraph (a)*, such provider has arrangements in place which enable that provider to refund to a learner, or to the person who paid the moneys concerned on behalf of the learner, the moneys most recently paid to the provider in respect of that programme.

(3) (a) The Higher Education and Training Awards Council and the Further Education and Training Awards Council shall each maintain a register of programmes of education and training in respect of which there are arrangements in place in accordance with *subsection (1)*.

(b) A register referred to in *paragraph (a)* shall be kept in such form and manner as the Authority may from time to time direct and the Authority shall publish, in such form and manner as the Authority considers appropriate, details of the register concerned.

(4) The requirement to provide information in accordance with *section 15(5)(d)* or *25(5)(d)*, as the case may be, may include information in respect of arrangements which a provider is required to have in place in accordance with this section.

(5) References in this Part to a provider ceasing to provide a programme of education and training include ceasing to provide the programme concerned for whatever reason, including—

- (a) the insolvency of the provider, or

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- (b) withdrawal of validation of the programme concerned by the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be,

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before completion of that programme.

44.—(1) Where a provider of a programme of education and training to which *section 43* applies ceases to provide the programme concerned, the relevant body shall make all reasonable efforts to assist the learners concerned to find an appropriate programme of education and training with another provider which will enable them to complete that education and training.

Assistance to find
alternative
programme.

(2) *Subsection (1)* applies without prejudice to the duties and obligations of the provider of a programme of education and training to the learners concerned.

(3) In this section "relevant body" means whichever of the Further Education and Training Awards Council or the Higher Education and Training Awards Council made or recognised an award or was to make or recognise an award in respect of the programme of education and training concerned.