



QQI

Quality and Qualifications Ireland
Dearbhú Cáilíochta agus Cáilíochtaí Éireann

Re: Implementation of the General Data Protection Regulation (GDPR)

Dear Provider

The purpose of this letter is to alert you to important changes arising from the General Data Protection Regulation which as you know came into force throughout Europe on 25th May 2018. This impacts on your organisation's interaction and relationship with QQI.

General

The *GDPR* supplements and complements the existing Data Protection Legislation¹ The legislation sets out the data protection rights of individuals and the associated responsibilities of those who hold and process personal information. Data protection rights should ensure that the information stored in relation to individuals is factually correct, only available to those who should have it, and only used for stated purposes with their knowledge and consent.

The *GDPR* imposes new obligations on those who hold and process personal information. In addition, it introduces significant penalties and fines for those in breach of these obligations. QQI assumes that you are working towards compliance with the *GDPR*. QQI's core quality assurance guidelines require all providers to be compliant with Data Protection Legislation. While this letter is intended to clarify some data protection issues for your organisation in the context of your relationship with QQI, you may need to seek legal advice to ascertain the range of responsibilities that you have under the law. QQI is not in a position to offer legal advice in this regard.

Data Controllers and Data Processors

A data controller is the individual or the legal person (organisation) who controls and is responsible for the keeping and use of personal information. Being a data controller carries with it significant legal responsibilities, so you should be quite clear if these responsibilities apply to you or your organisation. The data controller decides:

- what personal information is gathered and going to be kept; and
- the use to which the information will be put.

A data processor is the individual or organisation that holds, or collects and holds, personal data, for another individual or organisation that decides and is responsible for what happens to the data.

An individual or organisation can be both a data controller and a data processor in respect of distinct sets of personal data. In general, QQI providers are data processors in respect of the data that they collect from learners on behalf of QQI and which are essential for the purpose of certifying learners who undertake programmes leading to QQI awards. Providers will also be data controllers in respect

¹ Data Protection Legislation means all laws relating to the processing of Personal data, privacy and security, without limitation, the EU Data Protection Directive 95/46/EC, the Data Protection Acts 1988 , 2003 and 2018 (as may be amended from time to time), the Privacy and Electronic Communications Directive 2009/136/EC and the General Data Protection Regulation (GDPR).

of other personal data which they obtain and retain for their own purpose. The provider is legally responsible for these data.

QQI collects and retains personal data in the context of its statutory functions. The data it requires (collects and retains) in respect of certification, provider approval, programme validation, and its other statutory functions is attached in *Appendix 1*. QQI in fulfilling its functions may share this information with Government Departments and other public bodies. Data are only ever shared in limited circumstances and always in compliance with the legislation. The bodies with whom QQI may share information are listed in *Appendix 2*.

Responsibilities of data processors

Data processors have a limited set of responsibilities under the Data Protection legislation. These require that they must only process personal data on the instructions of the data controller. They must keep personal data secure from unauthorised access, disclosure, destruction or accidental loss. In addition, many data processors are required to register with the Data Protection Commissioner as a data processor. One of the most significant changes brought about by the GDPR is that it places new and direct obligations on data processors for the first time at an EU-wide level. In addition to these obligations, data-subjects² (e.g. a learner) can enforce their rights directly against data processors. Non-compliant processors are subject to sanctions, including significant fines. The provisions of the GDPR apply to data processors irrespective of the size or business model of a data processor.

Main obligations of data processors

QQI, as a data controller, may only appoint data processors that provide sufficient guarantees regarding the implementation of appropriate technical and organisational measures to ensure that the processing meets the requirements of the GDPR. Providers are required to process personal data in accordance with QQI's instructions. This obligation is very broad and therefore imposes an indirect obligation on providers to comply with many of the requirements which apply to QQI as a data controller.

Controller/processor contract

The greatly increased accountability of providers as data processors under the GDPR means that the controller/processor contract is important for you as a provider.

The binding obligations on the processor cover the duration, nature and purpose of the processing, the types of data processed and the obligations and rights of the data controller. The personal data should be processed only on documented instructions from QQI, and you (as data processor) must assist QQI in complying with many of its obligations as data controller. QQI will be sending data processing contracts to you and all providers detailing the obligations of providers as data processors, over the next few weeks. Please read this carefully on receipt and ensure that it is signed by the legal representative of your organisation and returned to QQI without delay.

Restrictions on sub-contracting by data processors

The GDPR gives data controllers (e.g. QQI) a wide degree of control in terms of the ability of the data processor (provider) to sub-contract. Providers, therefore, require the prior written consent of QQI before they sub-contract any part of the data-processing which relates to QQI. This will be confirmed in the QQI data processing contract.

² a data subject is any person whose personal data is being collected, held or processed, e.g. a learner

If the provider receives consent from QQI to sub-contract the data-processing, the provider is required to reflect the same contractual obligations it has with QQI in a contract with any sub-processors, and in addition, it remains liable to QQI for the actions or inactions of the sub-processor.

Demonstrating compliance

Controllers and processors are required to be able to demonstrate compliance with the GDPR. This means that you must maintain a record of all categories of processing activities. This must include details of the categories of processing carried out, details of any transfers to third countries (countries outside of the European Economic Area) and a general description of technical and organisational security measures. These records must be provided to QQI on request.

Security

Data controllers and data processors are required to implement appropriate security measures. What is appropriate is assessed in terms of a variety of factors including the sensitivity of the data, the risks to individuals associated with any security breach, the type of technology employed (new/old), the costs of implementation and the nature of the processing. Regular testing of the effectiveness of any security measure is required and should be documented.

Breach notification

The GDPR defines a data breach as a breach of security which leads to 'the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed'. Under current legislation there is no obligation on data processors to notify a data breach. The GDPR requires providers, as data processors, to notify QQI of any data breach without delay after becoming aware of it.

Consequences of non-compliance

Under the GDPR providers, like all data processors, are open to direct action by regulators and/or data subjects (learners) in respect of breaches of the law. Learners, therefore, will be able to take action against providers and claim damages where they have "suffered material or immaterial damage" as a result of an infringement of the providers' obligations (as data processor) under the GDPR. In addition, learners can enforce directly against providers who have breached any lawful instructions by QQI. This could result in damages or fines. Potentially, providers will be liable both to QQI and learners for the same breach, although there is a mechanism for apportionment of responsibility between data controllers (QQI) and data processors (provider) in circumstances where action is taken by a data subject (learner).

As well as damages claims from data controllers and data subjects, non-compliant data processors may also be subject to sanctions by the Data Protection Commissioner.

Legal basis for processing and consent

The existing core principles of data protection remain in place,³ but there are new requirements. One of these is that there must be a legal basis for processing. One such basis is consent of the data subject (the learner). Consent must be freely given, specific, informed and unambiguous. Consent

³ Core Principles of Data Protection: Obtain and process data fairly; Keep for specified, explicit and lawful purpose; Use it only for those purposes; Keep it safe and secure; Keep it adequate, relevant and not excessive; Do not retain it for longer than necessary for its purpose; Provide copy of personal data on request to that person

for the specific data to be provided to QQI must be obtained by a provider from each learner in advance of presenting that learner for certification. A template for the collection of that consent is provided at *Appendix 3*. The provider is requested to retain the relevant consent form from each learner and to provide it to QQI as required. We will advise in due course in relation to the retention period for these consent forms.

Steps taken by QQI in preparation for GDPR

You will have noticed that QQI has taken a number of steps toward the implementation of the GDPR. For example, we have removed/masked PPS numbers from all reports (provisional statements of results, transcripts of results, etc.); and we are reviewing and updating our database of contacts and will seek consent from all contacts whose details are retained.

Summary

The GDPR brings with it significant changes in how QQI works with its providers. To that end a data processing contract will be issued to you soon. We request that you have this signed and returned to QQI without delay. In addition, you must seek consent from individual learners pursuing programmes leading to QQI awards to collect and process the specified data on behalf of QQI. Finally, as outlined in paragraph 3 above, this letter does not constitute legal advice. Should you have any concerns regarding the introduction of the GDPR you may need to seek legal advice.

Appendix 1

Data processed by Quality and Qualifications Ireland (QQI) for the purposes of certification, provider approval and programme validation

(a) *The following information is the information that shall be processed by Quality and Qualifications Ireland, in the public interest and, in accordance with Section 9, and all relevant sections, of the Qualifications and Quality Assurance (Education and Training) Act 2012, in relation to education providers and learners,*

(i) Quality and Qualifications Ireland Making Awards

Data collected in relation to learners to whom QQI makes awards-

PPS number
Access ID Number
Gender
Date of birth
First name(s)
Family name(s)
Programme name
Programme code
Award name
Award code
Result for award (as appropriate)
Grade for award (as appropriate)
Address
County
Eircode
Certification Fee status- Exempt/Not Exempt

(ii) Quality Assurance

Data collected in relation to provider staff

First name(s)
Surname(s)
Email address
Contact telephone number(s)
Home Address
Job Title
Educational Qualifications
Professional Qualifications
Professional experience

Data collected in relation to expert panels

First name(s)
Surname(s)
Email address
Contact telephone number(s)
Home Address
Gender

Employer
Employer address
Job Title
Educational Qualifications
Professional Qualifications
Professional experience
Programme on which currently enrolled (learner representative)
Stage reached on programme on which currently enrolled (learner representative)
Provider of the programme on which currently enrolled (learner representative)
Declarations of interest relevant to role
Disciplines of expertise
Training received from QQI
Expert panels to which appointed by QQI
Name(s), job title and contact details of referees
PPS number
Bank details
Record of attendance at QQI Briefings
Contract for engagement with QQI

(iii) Validation

Data collected in relation to provider staff

First name(s)
Surname(s)
Email address
Contact telephone number(s)
Home Address
Job Title
Educational Qualifications
Professional Qualifications
Professional experience

Data collected in relation to expert panels

First name(s)
Surname(s)
Email address
Contact telephone number(s)
Home Address
Gender
Employer
Employer address
Job Title
Educational Qualifications
Professional Qualifications
Professional experience
Programme on which currently enrolled (learner representative)
Stage reached on programme on which currently enrolled (learner representative)
Provider of the programme on which currently enrolled (learner representative)
Declarations of interest relevant to role
Disciplines of expertise

Training received from QQI
Expert panels to which appointed by QQI
Name(s), job title and contact details of referees
PPS number
Bank details
Record of attendance at QQI Briefings
Contract for engagement with QQI

(iv) Protection of Enrolled Learners

Data collected from learner

First name(s)
Surname(s)
Domiciliary of origin
Nationality
Home address
Country
Postal code/Eircode
Address during term time
Eircode
Gender
Fees paid
Name of provider
Name of Programme
Award type
Award
Year of programme
Date of commencement
Number of Years completed
Exam Results
Entry standard to programme
Highest qualification
Accumulated credits
Current year credits

(v) Access Transfer and Progression

Data collected in relation to learners-

PPS number
Access ID Number
Gender
Date of birth
First name(s)
Family name(s)
Provider name
Programme name
Programme code
Award name
Award code

Entry standard for the programme
Result for award (as appropriate)
Grade for award (as appropriate)
Address
County
Eircode

Information prescribed in (i), (ii) (iii) (iv) (v) shall be collected by Qualifications and Quality Assurance Ireland from relevant and linked providers as defined in the Qualifications and Quality Assurance (Education and Training) Act 2012.

(b) *In addition to the information prescribed in Section (a), Quality and Qualifications Ireland shall also collect data from English Language Schools pertaining to the Accreditation and Coordination of English Language Services (ACELS) Scheme.*

Data collected in relation to provider staff

First name(s)
Surname(s)
Email address
Contact telephone number(s)
Job Title
Educational Qualifications
Professional Qualifications
Professional experience

Data collected in relation to expert panels

First name(s)
Surname(s)
Email address
Contact telephone number(s)
Home Address
Gender
Employer
Employer address
Job Title
Educational Qualifications
Professional Qualifications
Professional experience
Programme on which currently enrolled (learner representative)
Stage reached on programme on which currently enrolled (learner representative)
Provider of the programme on which currently enrolled (learner representative)
Declarations of interest relevant to role
Disciplines of expertise
Training received from QQI
Expert panels to which appointed by QQI
Name(s), job title and contact details of referees
PPS number
Bank details
Record of attendance at QQI Briefings

Information prescribed in (b) shall be collected by Qualifications and Quality Assurance Ireland from English Language Schools Recognised for the purpose of the Accreditation and Coordination of English Language Services (ACELS) Scheme.

(c) *The information prescribed in Section (a) above shall be processed for the following purposes:*

(i) Making Awards. The data maintained for the purpose of making awards, including joint awards, is at individual learner level in order for Quality and Qualifications Ireland (QQI) to fulfil its statutory awarding function as specified in Section 9(f) and Section 50 of the Qualifications and Quality Assurance (Education and Training) Act 2012. This enables QQI to make awards to learners who undertake programmes validated by QQI. Such programmes are offered by education and training providers that have a quality assurance relationship with QQI. Unique/personal identifiers, including PPSN, first name, surname, address, gender and date of birth must be available in order to link these datasets and make and issue the award to the correct learner. Date of birth and gender are used for statistical purposes. QQI maintains the records of the awards it and its legacy bodies make. QQI verifies/provides records of the awards made by it and its legacy awarding bodies. Such award verifications are made on application, from the award recipient or a party acting on their behalf.

(ii) QQI collects data in the course of reviewing education and training providers in the context of the approval, review and monitoring of quality assurance in education and training providers under Section 9(c) and in the context of other reviews under Section 42 of the Qualifications and Quality Assurance (Education and Training) Act 2012. The data relates to providers, their management, staff and learners. It also relates to subject matter experts (evaluator, reviewers and other personnel) who undertake work for, or on behalf of, QQI in the context of this work.

(iii) QQI collects data in order to fulfil its statutory function in relation to the validation of programmes, and the review and monitoring of validated programmes under Section 9(d) and all relevant sections of the Qualifications and Quality Assurance (Education and Training) Act 2012. The data collected relates to providers, their management, staff and learners. It also relates to subject matter experts (evaluator, reviewers and other personnel) who undertake work for, or on behalf of, QQI in the context of this work.

(iv) QQI collects data in order to fulfil its statutory function in relation to the protection of enrolled learners as specified in Section 9(n) and (o). The data collected includes name, date of birth, address, PPS, programme, award, monies most recently paid, and other data to enable QQI to fulfil this function.

(v) QQI collects data in order to fulfil its statutory function in relation to access, transfer and progression for learners.

Appendix 2

Bodies with whom QQI may share information detailed in Appendix 1

The Department of Education and Skills
The Department of Justice and Equality
The Department of Employment Affairs and Social Protection
The Department of Public Expenditure and Reform
The Higher Education Authority
The Department of Foreign Affairs
SUSI (part of the City of Dublin Education and Training Board)
Education and Training Boards
The Central Statistics Office
SOLAS
Revenue
The Central Applications Office
Irish Council for International Students (ICOS)
Education in Ireland (part of Enterprise Ireland)
Relevant providers and linked providers as defined in the Qualifications and Quality Assurance (Education and Training) Act 2012
English Language Schools recognised for the purpose of the Accreditation and Coordination of English Language Services (ACELS) Scheme.

Appendix 3

Consent Form for data required by QQI for the purpose of Certifying Learners

I [Name]

am undertaking a programme leading to a QQI award.

I understand that in order for that award to be made I am required to submit the following personal information to [name of provider] for onward submission of that information to QQI. I understand that QQI will maintain and retain this data indefinitely for the purpose of verification and confirmation of my QQI award, for example to employers, to other training providers and to myself.

There may be circumstances where I give permission to have this information shared, for example with CAO.

Signed: (Name)

Date:

Data collected in relation to learners to whom QQI makes awards-

PPS number

Access ID Number

Gender

Date of birth

First name(s)

Family name(s)

Programme name

Programme code

Award name

Award code

Result for award (as appropriate)

Grade for award (as appropriate)

Address

County

Eircode

Certification Fee status- Exempt/Not Exempt