



# Higher Education Act 2004

## CHAPTER 8

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# Higher Education Act 2004

## 2004 CHAPTER 8

An Act to make provision about research in the arts and humanities and about complaints by students against institutions providing higher education; to make provision about fees payable by students in higher education; to provide for the appointment of a Director of Fair Access to Higher Education; to make provision about grants and loans to students in higher or further education; to limit the jurisdiction of visitors of institutions providing higher education; and for connected purposes. [1st July 2004]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### RESEARCH IN ARTS AND HUMANITIES

#### 1 Arts and Humanities Research Council

In this Part “the Arts and Humanities Research Council” means a body to be established by Royal Charter wholly or mainly for objects consisting of, or comprised in, the following—

- (a) carrying out, facilitating, encouraging and supporting—
  - (i) research in the arts and humanities, and
  - (ii) instruction in the arts and humanities,
- (b) advancing and disseminating knowledge in, and promoting understanding of, the arts and humanities,
- (c) promoting awareness of the body's activities, and
- (d) providing advice on matters relating to the body's activities.

**2 Transfer to Council of property etc of Arts and Humanities Research Board**

- (1) All property, rights and liabilities to which the Arts and Humanities Research Board is entitled or subject immediately before the appointed day become, by virtue of this section, property, rights and liabilities of the Arts and Humanities Research Council on that day.
- (2) Where rights and liabilities under a contract of employment are transferred by virtue of subsection (1), the contract has effect from the appointed day as if originally made between the employee and the Council.
- (3) In this section “the appointed day” means the day appointed under section 52(2) for the commencement of this section.

**3 Expenses of Council**

- (1) The Secretary of State may pay the Arts and Humanities Research Council such sums as he determines in respect of the expenses that the Council has incurred, or expects to incur, in carrying out the objects listed in section 1.
- (2) Subsection (1) applies whether the Council has incurred, or expects to incur, the expenses in the United Kingdom or elsewhere.
- (3) The Council must comply with any direction of the Secretary of State as to the use or expenditure of payments made under subsection (1).
- (4) The Council must give the Secretary of State programmes and estimates of its expenses.
- (5) Programmes and estimates under subsection (4) must be given –
  - (a) in the form required by the Secretary of State, and
  - (b) at the times required by the Secretary of State.

**4 Returns, reports etc. by Council to Secretary of State**

- (1) The Arts and Humanities Research Council must give the Secretary of State such returns, accounts and other information relating to its property and activities as the Secretary of State requires.
- (2) As soon as possible after the end of each financial year, the Council must give the Secretary of State a report on the performance of its functions during that year.
- (3) The Secretary of State must lay a copy of any report given under subsection (2) before each House of Parliament.
- (4) The copy of a report laid in accordance with subsection (3) may include any comments which the Secretary of State has on the report.
- (5) In this section “financial year” means a period of 12 months ending with 31st March.

**5 Pensions**

- (1) Employment by the Arts and Humanities Research Council is included in the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) can apply.

- (2) Accordingly, in the appropriate place in the list of Other Bodies in Schedule 1 to that Act (which lists the kinds of employment etc. to which a scheme can apply) there is inserted “The Arts and Humanities Research Council”.
- (3) The Arts and Humanities Research Council must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of the increase attributable to subsection (1) in the sums payable under that Act out of money provided by Parliament.

## **6 Accounts and records of Council**

- (1) The Arts and Humanities Research Council must keep proper accounts and other records.
- (2) The Council must give the Secretary of State a statement of accounts in relation to each financial year.
- (3) A statement of accounts under subsection (2) must be given –
  - (a) in the form required by the Secretary of State, and
  - (b) at the time required by the Secretary of State.
- (4) The Secretary of State must transmit each statement of accounts given under subsection (2) to the Comptroller and Auditor General on or before 30th November following the end of the financial year to which the statement relates.
- (5) The Comptroller and Auditor General must –
  - (a) examine and certify each statement of accounts transmitted under subsection (4), and
  - (b) lay before each House of Parliament –
    - (i) a copy of the accounts, and
    - (ii) a report on the accounts.
- (6) In this section “financial year” has the same meaning as in section 4.

## **7 Northern Ireland: reserved matters**

In Schedule 3 to the Northern Ireland Act 1998 (c. 47) (reserved matters), after paragraph 35 there is inserted –

“35A. The Arts and Humanities Research Council (as defined by section 1 of the Higher Education Act 2004).”

## **8 Activities outside United Kingdom**

Nothing in this Part restricts the activities of the Arts and Humanities Research Council to the United Kingdom or any part of the United Kingdom.

## **9 Charter of Council**

Nothing in this Part affects –

- (a) any power to amend or revoke the charter of the Arts and Humanities Research Council, or
- (b) the operation of any amendment made to the charter of the Council.

**10 Research in arts and humanities**

- (1) The Secretary of State may –
  - (a) carry out or support research in the arts and humanities,
  - (b) disseminate the results of research in the arts and humanities,
  - (c) further the practical application of the results of research in the arts and humanities,
  - (d) establish advisory bodies for the purpose of assisting the Secretary of State in matters connected with research in the arts and humanities, and
  - (e) if the Secretary of State establishes such a body, appoint its members on terms which include the payment of remuneration, allowances or pension benefits to or in respect of them.
- (2) The National Assembly for Wales (in this Act referred to as “the Assembly”) may, in relation to Wales, –
  - (a) carry out or support research in the arts and humanities,
  - (b) disseminate the results of research in the arts and humanities,
  - (c) further the practical application of the results of research in the arts and humanities,
  - (d) establish advisory bodies for the purpose of assisting the Assembly in matters connected with research in the arts and humanities, and
  - (e) if the Assembly establishes such a body, appoint its members on terms which include the payment of remuneration, allowances or pension benefits to or in respect of them.
- (3) The Scottish Ministers may, in relation to Scotland, –
  - (a) carry out or support research in the arts and humanities,
  - (b) disseminate the results of research in the arts and humanities,
  - (c) further the practical application of the results of research in the arts and humanities,
  - (d) establish advisory bodies for the purpose of assisting the Scottish Ministers in matters connected with research in the arts and humanities, and
  - (e) if the Scottish Ministers establish such a body, appoint its members on terms which include the payment of remuneration, allowances or pension benefits to or in respect of them.
- (4) The Northern Ireland Department having responsibility for higher education may, in relation to Northern Ireland, –
  - (a) carry out or support research in the arts and humanities,
  - (b) disseminate the results of research in the arts and humanities,
  - (c) further the practical application of the results of research in the arts and humanities,
  - (d) establish advisory bodies for the purpose of assisting the Department in matters connected with research in the arts and humanities, and
  - (e) if the Department establishes such a body, appoint its members on terms which include the payment of remuneration, allowances or pension benefits to or in respect of them.

## PART 2

### REVIEW OF STUDENT COMPLAINTS

#### 11 Qualifying institutions

In this Part “qualifying institution” means any of the following institutions in England or Wales –

- (a) a university (whether or not receiving financial support under section 65 of the 1992 Act) whose entitlement to grant awards is conferred or confirmed by –
  - (i) an Act of Parliament,
  - (ii) a Royal Charter, or
  - (iii) an order under section 76 of the 1992 Act;
- (b) a constituent college, school or hall or other institution of a university falling within paragraph (a);
- (c) an institution conducted by a higher education corporation;
- (d) a designated institution, as defined by section 72(3) of the 1992 Act.

#### 12 Qualifying complaints

- (1) In this Part “qualifying complaint” means, subject to subsection (2), a complaint about an act or omission of a qualifying institution which is made by a person –
  - (a) as a student or former student at that institution, or
  - (b) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution’s awards.
- (2) A complaint which falls within subsection (1) is not a qualifying complaint to the extent that it relates to matters of academic judgment.

#### 13 Designation of operator of student complaints scheme

- (1) The Secretary of State may, for the purposes of this Part, designate a body corporate as the designated operator for England as from a date specified in the designation.
- (2) The Assembly may, for the purposes of this Part, designate a body corporate as the designated operator for Wales as from a date specified in the designation.
- (3) The Secretary of State or the Assembly may not designate a body under subsection (1) or (2) unless he or the Assembly is satisfied that the body –
  - (a) meets all of the conditions set out in Schedule 1,
  - (b) is providing a scheme for the review of qualifying complaints that meets all of the conditions set out in Schedule 2, or is proposing to provide such a scheme from a date not later than the effective date,
  - (c) has consulted interested parties about the provisions of that scheme, and
  - (d) consents to the designation.
- (4) If a body is designated under subsection (1) or (2) the Secretary of State or the Assembly must, before the effective date, –



- (a) give the body notice of the designation, and
  - (b) publish notice of the designation in such manner as he or the Assembly thinks fit.
- (5) In this Part—
- (a) “the effective date”, in relation to the designation of a body corporate under this section, means the date specified in the designation as the date from which the body is designated as designated operator, and
  - (b) any reference to the designated operator is—
    - (i) in relation to an institution in England, a reference to the body designated under subsection (1), and
    - (ii) in relation to an institution in Wales, a reference to the body designated under subsection (2).

#### **14 Duties of designated operator**

The designated operator must comply with the duties set out in Schedule 3 during the period specified in that Schedule.

#### **15 Duties of qualifying institutions**

- (1) The governing body of every qualifying institution in England and Wales must comply with any obligation imposed upon it by a scheme for the review of qualifying complaints that is provided by the designated operator.
- (2) The duty imposed by subsection (1) applies from the effective date of the designation and ceases to apply only if the designation is terminated.
- (3) The obligations referred to in subsection (1) include any obligation to pay fees to the designated operator.

#### **16 Termination of designation**

- (1) The designation of a body under section 13 continues until it is terminated in accordance with Schedule 4.
- (2) If the designation of a body is terminated, the Secretary of State or the Assembly must publish notice of the termination in such manner as he or it thinks fit.

#### **17 Privilege in relation to law of defamation**

- (1) For the purposes of the law of defamation, any proceedings relating to the review under the scheme of a qualifying complaint are to be treated as if they were proceedings before a court.
- (2) For those purposes, absolute privilege attaches to the publication of—
  - (a) any decision or recommendation made under the scheme by a person responsible for reviewing a qualifying complaint, and
  - (b) any report under paragraph 6 or 7 of Schedule 3.
- (3) In this section “the scheme” means the scheme for the review of qualifying complaints provided by the designated operator.

## 18 Provision where designation of operator to cease

- (1) Where –
- (a) an agreement to terminate a designation has been made under paragraph 2 of Schedule 4,
  - (b) notice to terminate a designation has been given under paragraph 4 or 6 of Schedule 4, or
  - (c) the designated operator has ceased to exist,
- the Secretary of State (in relation to England) or, as the case requires, the Assembly (in relation to Wales) may by order make such provision as he or it thinks fit for, or in connection with, the review of qualifying complaints.
- (2) The provision that may be made under this section includes any one or more of the following –
- (a) provision requiring the designated operator to provide the scheme in accordance with specified requirements;
  - (b) provision modifying, or requiring the designated operator to modify, the provisions of the scheme;
  - (c) provision about the fees payable under the scheme, including provision requiring the repayment of fees already paid;
  - (d) provision for a specified person to take over provision of the scheme;
  - (e) provision for any provision of this Part that applies in relation to a scheme provided by the designated operator to apply (with or without modifications) in relation to a scheme provided by a person specified by virtue of paragraph (d);
  - (f) provision for a specified person to review qualifying complaints, or specified descriptions of qualifying complaints, otherwise than under the scheme;
  - (g) provision requiring the payment of fees by the governing bodies of qualifying institutions to a person specified by virtue of paragraph (f);
  - (h) provision requiring the designated operator to provide such information and assistance as the Secretary of State or the Assembly considers necessary –
    - (i) for the Secretary of State or the Assembly to make provision under this section; or
    - (ii) for any person to comply with, or act under or in accordance with, provision made under this section.
- (3) The Secretary of State or the Assembly may be specified by virtue of subsection (2)(d), but not by virtue of subsection (2)(f).
- (4) In this section –
- “the scheme” means the scheme for the review of qualifying complaints that the designated operator provides or has been providing;
  - “specified” means specified in an order under this section.

## 19 Extension of time for bringing discrimination proceedings

- (1) In section 76 of the Sex Discrimination Act 1975 (c. 65) (period within which proceedings to be brought) after subsection (2) insert –
- “(2A) Where in England and Wales –
- (a) proceedings or prospective proceedings under section 66 relate to the act or omission of a qualifying institution, and

- (b) the dispute concerned is referred as a complaint under the student complaints scheme before the end of the period of six months mentioned in subsection (2)(a),  
the period allowed by subsection (2)(a) shall be extended by two months.
- (2B) In subsection (2A) –  
 “qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;  
 “the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.”
- (2) In section 68 of the Race Relations Act 1976 (c. 74) (period within which proceedings to be brought) after subsection (3) insert –  
 “(3A) Where in England and Wales –  
 (a) proceedings or prospective proceedings by way of a claim under section 57 relate to the act or omission of a qualifying institution,  
 (b) the dispute concerned is referred as a complaint under the student complaints scheme before the end of the period of six months mentioned in subsection (2), and  
 (c) subsection (3) does not apply,  
 the period allowed by subsection (2) for instituting proceedings in respect of the claim shall be extended by two months.
- (3B) In subsection (3A) –  
 “qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;  
 “the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.”
- (3) In Schedule 3 to the Disability Discrimination Act 1995 (c. 50) (enforcement and procedure), in paragraph 13 (period within which proceedings must be brought) for sub-paragraph (2) substitute –  
 “(2) If, in relation to proceedings or prospective proceedings under section 28V –  
 (a) the dispute concerned is referred for conciliation in pursuance of arrangements under section 31B before the end of the period of six months mentioned in sub-paragraph (1), or  
 (b) in England and Wales, in a case not falling within paragraph (a), the dispute concerned relates to the act or omission of a qualifying institution and is referred as a complaint under the student complaints scheme before the end of that period,  
 the period of six months allowed by sub-paragraph (1) shall be extended by two months.
- (2A) In sub-paragraph (2)(b) –  
 “qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;

“the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.”

## 20 Exclusion of visitor’s jurisdiction in relation to student complaints

- (1) The visitor of a qualifying institution has no jurisdiction in respect of any complaint which falls within subsection (2) or (3).
- (2) A complaint falls within this subsection if it is made in respect of an application for admission to the qualifying institution as a student.
- (3) A complaint falls within this subsection if it is made by a person –
  - (a) as a student or former student at the qualifying institution, or
  - (b) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution’s awards.

## 21 Interpretation of Part 2

In this Part –

“award” means any degree, diploma, certificate or other academic award or distinction;

“designated operator” has the meaning given by section 13(5)(b);

“the effective date” has the meaning given by section 13(5)(a);

“governing body” has the meaning given by section 90(1) of the 1992 Act, but subject to any provision made by virtue of section 90(2) of that Act;

“higher education corporation” has the meaning given by section 90(1) of the 1992 Act;

“interested parties”, in relation to a scheme for the review of qualifying complaints provided or to be provided by a body corporate, means –

- (a) qualifying institutions in England or Wales (as the case may be), and
- (b) persons selected by the body corporate from amongst those it considers to represent the interests of students at qualifying institutions in England or Wales (as the case may be);

“qualifying complaint” has the meaning given by section 12;

“qualifying institution” has the meaning given by section 11.

## PART 3

### STUDENT FEES AND FAIR ACCESS

#### *Introductory*

## 22 Meaning of “plan” etc.

In this Part –

- (a) any reference to a plan is a reference to a plan complying with section 33, and

- (b) any reference to an English approved plan or a Welsh approved plan is a reference to a plan approved under section 34 in relation to England, or as the case may be, in relation to Wales.

*Imposition of conditions as to fees*

**23 Duty of Secretary of State to impose condition as to student fees, etc.**

- (1) The Secretary of State must, when making any grant to a funding body under section 68 of the 1992 Act or section 7 of the 1994 Act, impose under subsection (1) of the section concerned a condition requiring that body to impose a condition under section 24 in relation to any grants, loans or other payments made by that body under section 65 of the 1992 Act, or (as the case may be) section 5 of the 1994 Act, to the governing body of a relevant institution.
- (2) In this section –
- “funding body” means –
- (a) the Higher Education Funding Council for England, or
  - (b) the Teacher Training Agency;
- “relevant institution” means an institution specified by the Secretary of State in a condition under subsection (1), or an institution of a class so specified.

**24 Condition to be imposed by English funding bodies**

- (1) A condition under this section requires the governing body of the relevant institution –
- (a) to secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when an English approved plan is in force in relation to the institution do not exceed such limit, not exceeding the higher amount, as is provided by the plan for that course and that academic year,
  - (b) to secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when no English approved plan is in force in relation to the institution do not exceed the basic amount, and
  - (c) to comply with the general provisions of any English approved plan that is in force in relation to the institution during any part of the grant period during which it is in force.
- (2) For the purposes of subsection (1) –
- (a) an academic year which begins at the same time as the grant period is to be taken to begin during the grant period, and
  - (b) an academic year which begins with the day on which an English approved plan comes into force is to be taken to begin at a time when the plan is in force.
- (3) A condition under this section must provide –
- (a) in the event of a failure by the governing body to comply with the requirement specified in subsection (1)(a) –
    - (i) where the qualifying fees do not exceed the higher amount, for the imposition by the funding body on the governing body of

- any financial requirements required by a direction under section 37(1)(a), and
- (ii) where the qualifying fees exceed that amount, for the imposition by the funding body on the governing body of any financial requirements required by a direction under section 37(1)(a) and of other financial requirements determined by the funding body in accordance with principles specified by the Secretary of State in the condition under section 23,
  - (b) in the event of a failure by the governing body to comply with the requirement specified in subsection (1)(b), for the imposition by the funding body on the governing body of financial requirements determined by the funding body in accordance with principles specified by the Secretary of State in the condition under section 23, and
  - (c) in the event of a failure by the governing body to comply with the requirement specified in subsection (1)(c), for the imposition by the funding body on the governing body of any financial requirements required by a direction under section 37(1)(a).
- (4) Any financial requirements imposed by virtue of subsection (3) must relate to one or more of the following—
- (a) the repayment, with or without interest, of the whole or any part of any sums received by the governing body in respect of the grant, loan or other payment in question,
  - (b) the withdrawal or reduction of any amount that has been awarded but not yet paid in respect of the grant, loan or other payment in question, or
  - (c) the refusal to award (or to award to the extent expected) any other grant, loan or other payment under section 65 of the 1992 Act or (as the case may be) section 5 of the 1994 Act in respect of the grant period or any subsequent period.
- (5) Where—
- (a) a condition is imposed under this section in connection with any grants, loans or other payments made to the governing body of a relevant institution, and
  - (b) those payments are to any extent made in respect of persons undertaking a course which is provided in whole or part by any other institution,
- then, for the purposes of this section, fees payable by such persons to the other institution are to be regarded as fees payable by them to the relevant institution.
- (6) In this section and section 25—
- “academic year”, in relation to a course, means an academic year applicable to the course;
  - “the basic amount” means such amount as may be prescribed for the purposes of this section as the basic amount;
  - “funding body” has the same meaning as in section 23;
  - “the grant period” means the period in respect of which the grants, loans, or other payments to which the relevant condition under section 23 relates are made;
  - “the higher amount” means such amount as may be prescribed for the purposes of this section as the higher amount;

“prescribed” means prescribed by regulations made by the Secretary of State;

“qualifying course” means a course of any description prescribed for the purposes of this section;

“qualifying fees”, in relation to a relevant institution, means the fees payable to the institution by a qualifying person in connection with his undertaking a qualifying course;

“qualifying person” means a person falling within any class of persons prescribed for the purposes of this section;

“relevant institution” has the same meaning as in section 23.

## **25 Transitional cases in which condition must not allow fees to exceed basic amount**

- (1) Section 24(1)(b) has effect in relation to the qualifying fees payable by a qualifying person in connection with his undertaking a qualifying course (“the relevant course”) in a case where subsection (2) or (3) applies, even if those fees are payable in respect of an academic year which begins at a time when an English approved plan is in force in relation to the institution.
- (2) This subsection applies where—
  - (a) the qualifying person had on or before 1st August 2005 received an offer, whether conditional on obtaining specified qualifications or not, of a place on the relevant course or a similar course, and
  - (b) the first academic year of the relevant course begins before 1st September 2007.
- (3) This subsection applies where—
  - (a) the qualifying person had received an offer of a place on a qualifying course (whether or not at the same institution as the relevant course) the first academic year of which begins before 1st September 2006,
  - (b) he was unable to take up the offer because a specified qualification or grade was not awarded to him,
  - (c) he appealed against the decision not to award him the qualification or grade,
  - (d) the appeal was allowed after the last date on which he could have taken up the offer,
  - (e) as a result he was offered a place on the relevant course, and
  - (f) the first academic year of the relevant course begins after 31st August 2006 but before 1st September 2007.
- (4) For the purposes of subsection (2)(a) a course (“the original course”) is similar to the relevant course if—
  - (a) it appears to the governing body of the institution providing the relevant course that the subject-matter of the course is in whole or in part the same as the subject-matter of the original course, and
  - (b) except where the original course is no longer being provided, the relevant course is provided by the institution which was to have provided the original course.

## **26 Regulations under section 24(6) relating to basic or higher amount**

- (1) The Secretary of State may not make the first regulations under subsection (6) of section 24 prescribing the basic amount and the higher amount for the purposes of that section unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Where regulations under subsection (6) of section 24 have been made prescribing the basic amount and the higher amount for the purposes of that section –
  - (a) no regulations may be made increasing the basic amount unless –
    - (i) the Secretary of State is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or
    - (ii) a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament, and
  - (b) no regulations may be made increasing the higher amount unless –
    - (i) the Secretary of State is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or
    - (ii) each House of Parliament has at any time after 1st January 2010 passed a resolution that, with effect from a date specified in the resolution, the higher amount should be increased to an amount specified in the resolution, and the increase is an increase to the specified amount with effect from the specified date.
- (3) For the purposes of subsection (2)(a)(i) and (b)(i) the Secretary of State is to have regard to such index of prices as may be specified in, or determined in accordance with, regulations made by him under this subsection.

## **27 Power of National Assembly for Wales to impose conditions as to student fees, etc.**

- (1) The power of the Assembly to impose conditions under section 68(1) of the 1992 Act or section 7(1) of the 1994 Act in relation to grants paid to the Higher Education Funding Council for Wales includes power to impose a condition requiring the Council to impose a condition under section 28 in relation to any grants, loans or other payments made by the Council under section 65 of the 1992 Act, or (as the case may be) section 5 of the 1994 Act, to the governing body of a relevant institution.
- (2) In this section “relevant institution” means an institution specified by the Assembly in a condition under subsection (1), or an institution of a class so specified.

## **28 Condition that may be required to be imposed by Higher Education Funding Council for Wales**

- (1) A condition under this section requires the governing body of the relevant institution –
  - (a) to secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when a Welsh approved plan is in force in relation to the institution do not exceed such limit, not exceeding the higher amount, as is provided by the plan for that course and that academic year,



- (b) to secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when no Welsh approved plan is in force in relation to the institution do not exceed the basic amount, and
  - (c) to comply with the general provisions of any Welsh approved plan that is in force in relation to the institution during any part of the grant period during which it is in force.
- (2) For the purposes of subsection (1) –
- (a) an academic year which begins at the same time as the grant period is to be taken to begin during the grant period, and
  - (b) an academic year which begins with the day on which a Welsh approved plan comes into force is to be taken to begin at a time when the plan is in force.
- (3) A condition under this section must provide, in the event of a failure of the governing body to comply with any of the requirements specified in subsection (1), for the imposition by the Higher Education Funding Council for Wales on the governing body of financial requirements determined by the Council in accordance with principles specified by the Assembly in the condition under section 27.
- (4) Any financial requirements imposed by virtue of subsection (3) must relate to one or more of the following –
- (a) the repayment, with or without interest, of the whole or any part of any sums received by the governing body in respect of the grant, loan or other payment in question,
  - (b) the withdrawal or reduction of any amount that has been awarded but not yet paid in respect of the grant, loan or other payment in question, or
  - (c) the refusal to award (or to award to the extent expected) any other grant, loan or other payment under section 65 of the 1992 Act or (as the case may be) section 5 of the 1994 Act in respect of the grant period or any subsequent period.
- (5) Where –
- (a) a condition is imposed under this section in connection with any grants, loans or other payments made to the governing body of a relevant institution, and
  - (b) those payments are to any extent made in respect of persons undertaking a course which is provided in whole or part by any other institution,

then, for the purposes of this section, fees payable by such persons to the other institution are to be regarded as fees payable by them to the relevant institution.

- (6) In this section –
- “academic year”, in relation to a course, means an academic year applicable to the course;
  - “the basic amount” means such amount as may be prescribed for the purposes of this section as the basic amount;
  - “the grant period” means the period in respect of which the grants, loans, or other payments to which the relevant condition under section 27 relates are made;

- “the higher amount” means such amount as may be prescribed for the purposes of this section as the higher amount;
- “prescribed” means prescribed by regulations made by the Assembly;
- “qualifying course” means a course of any description prescribed for the purposes of this section;
- “qualifying fees”, in relation to a relevant institution, means the fees payable to the institution by a qualifying person in connection with his undertaking a qualifying course;
- “qualifying person” means a person falling within any class of persons prescribed for the purposes of this section;
- “relevant institution” has the same meaning as in section 27.

## 29 Sections 23 to 28: supplementary provisions

- (1) No condition under section 24 or 28 applies in relation to any fees which are payable, in accordance with regulations under section 1 of the Education (Fees and Awards) Act 1983 (c. 40) (fees at universities and further education establishments) by students other than those falling within any class of persons prescribed by such regulations for the purposes of subsection (1) or (2) of that section (persons connected with the United Kingdom, etc.).
- (2) The power to prescribe descriptions of course by virtue of the definition of “qualifying course” in section 24(6) or 28(6) may not be exercised in such a way as to discriminate –
  - (a) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given, and
  - (b) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate.
- (3) Nothing in the 1992 Act or the 1994 Act, so far as it imposes any prohibition or other requirement in relation to the imposition of conditions by the Secretary of State, the Assembly, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Teacher Training Agency applies to –
  - (a) any condition under section 23 imposed by the Secretary of State,
  - (b) any condition under section 27 imposed by the Assembly, or
  - (c) any condition under section 24 or 28 imposed by either of those Councils or that Agency.

### *Plans authorising fees of more than basic amount*

## 30 Meaning of “the relevant authority”

- (1) In this Part “the relevant authority” means –
  - (a) in relation to England, the Director (as defined by section 31(1)), and
  - (b) in relation to Wales, such person as may be designated for the purposes of this section by regulations made by the Assembly.
- (2) The power conferred by subsection (1)(b) includes power to designate the Higher Education Funding Council for Wales.
- (3) Regulations under subsection (1)(b) designating a person as the relevant authority in relation to Wales may make such amendments of any enactment

(including any enactment contained in this Act) as appear to the Assembly to be necessary or expedient in connection with the designation of that person.

### **31 Director of Fair Access to Higher Education**

- (1) There is to be a Director of Fair Access to Higher Education (in this Part referred to as “the Director”).
- (2) The Director is to be appointed by the Secretary of State.
- (3) The Director is to have such functions relating to plans as are conferred on him by or under this Part.
- (4) In addition, the Director may, where he considers it appropriate to do so—
  - (a) identify good practice relating to the promotion of equality of opportunity in connection with access to higher education (whether full-time or part-time), and
  - (b) give advice about such practice to publicly-funded institutions.
- (5) In subsection (4)(b), “publicly-funded institution” means any institution receiving grants, loans or other payments from the Higher Education Funding Council for England under section 65 of the 1992 Act or from the Teacher Training Agency under section 5 of the 1994 Act.
- (6) Schedule 5 makes further provision about the Director.

### **32 General duties of relevant authority**

- (1) The Director must perform his functions under this Part in such a way as to promote and safeguard fair access to higher education (including part-time higher education in so far as his functions are exercisable in relation to it).
- (2) In the performance of his functions under this Part, the Director has a duty to protect academic freedom including, in particular, the freedom of institutions—
  - (a) to determine the contents of particular courses and the manner in which they are taught, supervised or assessed, and
  - (b) to determine the criteria for the admission of students and apply those criteria in particular cases.
- (3) The Director must, in the performance of his functions under this Part, have regard to any guidance given to him by the Secretary of State.
- (4) The relevant authority in relation to Wales must, in the performance of the functions that are conferred on it by this Part as the relevant authority, have regard to any guidance given to it by the Assembly.

### **33 Contents of plans**

- (1) A plan under this section relating to an institution must, in relation to each qualifying course in connection with which fees are to be payable to the institution by qualifying persons, specify or provide for the determination of a limit (not exceeding the higher amount) which those fees are not permitted to exceed.
- (2) In relation to England, a plan under this section—

- (a) must also include such provisions relating to the promotion of equality of opportunity as are required by regulations to be included in the plan, and
  - (b) may also include further provisions relating to the promotion of equality of opportunity.
- (3) In relation to Wales, a plan under this section –
- (a) must also include such provisions relating to –
    - (i) the promotion of equality of opportunity, or
    - (ii) the promotion of higher education,as are required by regulations to be included in the plan, and
  - (b) may also include further provisions relating to either of those matters.
- (4) In this Part any reference to the “general provisions” of a plan under this section is a reference to the provisions included in the plan by virtue of subsection (2) or (3).
- (5) The general provisions that may be required by regulations made by virtue of subsection (2) or (3) include, in particular, provisions –
- (a) requiring the governing body to take, or secure the taking of, measures to attract applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in higher education,
  - (b) requiring the governing body to provide, or secure the provision of, financial assistance to students,
  - (c) requiring the governing body to make available to students and prospective students information about financial assistance available to students from any source,
  - (d) setting out objectives relating to the promotion of equality of opportunity and, in relation to Wales, the promotion of higher education,
  - (e) relating to the monitoring by the governing body of –
    - (i) its compliance with the provisions of the plan, and
    - (ii) its progress in achieving any objectives set out in the plan by virtue of paragraph (d), and
  - (f) requiring the provision of information to the relevant authority.
- (6) Regulations made under subsection (2) or (3) may not require a plan –
- (a) to include among the general provisions of the plan any provision referring to particular courses or to the manner in which courses are taught, supervised or assessed, or
  - (b) to include any provision relating to the criteria for the admission of students.
- (7) In this section –
- “equality of opportunity” means equality of opportunity in connection with access to higher education;
  - “the higher amount” means –
    - (a) in relation to England, the amount from time to time prescribed as the higher amount under section 24(6), and
    - (b) in relation to Wales, the amount from time to time prescribed as the higher amount under section 28(6);
  - “qualifying course” and “qualifying person” –

- (a) in relation to England, have the same meaning as in section 24, and
  - (b) in relation to Wales, have the same meaning as in section 28;
- “regulations” means regulations made –
- (a) in relation to England, by the Secretary of State, and
  - (b) in relation to Wales, by the Assembly.

### **34 Approval of plans**

- (1) The governing body of any institution which is or may become eligible to receive grants under section 65 of the 1992 Act or section 5 of the 1994 Act may apply to the relevant authority for approval of a proposed plan relating to the institution.
- (2) The relevant authority may, if it thinks fit, approve the plan.
- (3) The relevant authority may issue guidance to institutions falling within subsection (1) as to the matters to which the relevant authority will have regard in deciding whether to approve plans.
- (4) The relevant authority’s functions under this section are to be exercised in accordance with regulations.
- (5) Regulations may, in particular, specify matters to which the relevant authority is, or is not, to have regard in making any determination relating to approval.
- (6) Regulations may require the institution to which any plan approved under this section relates to publish the plan in the prescribed manner.
- (7) In this section “regulations” means regulations made –
  - (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the Assembly.

### **35 Duration of plans**

- (1) A plan must specify the period during which it is to be in force.
- (2) The length of that period must not exceed such maximum as may be prescribed by regulations made –
  - (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the Assembly.
- (3) Subsections (1) and (2) do not prevent the approval of a new plan to take effect on the expiry of a previous plan.

### **36 Variation of plans**

- (1) Regulations may make provision enabling an English approved plan or a Welsh approved plan to be varied with the approval of the relevant authority.
- (2) In this section “regulations” means regulations made –
  - (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the Assembly.

### **37 Enforcement of plans: England**

- (1) If the Director is satisfied that the governing body of an institution which by virtue of a condition under section 24 is required to comply with the requirement specified in section 24(1)(a) or (c) has failed to comply with that requirement, the Director may do either or both of the following –
  - (a) direct the Higher Education Funding Council for England or the Teacher Training Agency (or both) to impose specified financial requirements on the governing body under section 24(3), or
  - (b) notify the governing body that on the expiry of the existing plan he will refuse to approve a new plan under section 34 during a specified period.
- (2) The governing body of an institution is not to be regarded for the purposes of subsection (1) as having failed to comply with the requirement specified in section 24(1)(c) by reason of its failure to comply with any of the general provisions of an English approved plan, if the governing body shows that it has taken all reasonable steps to comply with that provision.
- (3) The Secretary of State may by regulations make provision –
  - (a) as to the matters to which the Director must, or may not, have regard in exercising his powers under subsection (1),
  - (b) as to the procedure to be followed in connection with the giving of any direction or notification under subsection (1),
  - (c) as to the financial requirements that may be specified by virtue of subsection (1)(a), and
  - (d) as to the effect of a notification under subsection (1)(b).

### **38 Enforcement of plans: Wales**

- (1) If the relevant authority is satisfied that the governing body of an institution which by virtue of a condition imposed under section 28 is required to comply with the requirement specified in section 28(1)(a) or (c) has failed to comply with that requirement, the relevant authority may notify the governing body that on the expiry of the existing plan it will refuse to approve a new plan under section 34 during a specified period.
- (2) The period specified under subsection (1) must not exceed any maximum period prescribed by regulations made by the Assembly.
- (3) The Assembly may by regulations make provision –
  - (a) as to the matters to which the relevant authority must, or may not, have regard in exercising its powers under subsection (1),
  - (b) as to the procedure to be followed in connection with the giving of any notification under that subsection, and
  - (c) as to the effect of such a notification.
- (4) The exercise of the power conferred by subsection (1) (whether or not by the Higher Education Funding Council for Wales) does not prevent the Council from enforcing the condition imposed under section 28 by imposing financial requirements on the governing body in pursuance of any condition imposed by virtue of section 28(3).

**39 Review of decisions made by relevant authority**

Regulations made by virtue of section 34, 36, 37(3)(b) or 38(3)(b) must include provision –

- (a) requiring any decision of the relevant authority under section 34, 36, 37 or 38 affecting the governing body of an institution to have effect in the first instance as a provisional decision,
- (b) enabling the governing body of the institution to apply for a review of the provisional decision to a person, or panel of persons, appointed in accordance with the regulations –
  - (i) in relation to England, by the Secretary of State, or
  - (ii) in relation to Wales, by the Assembly,
- (c) enabling the Secretary of State or the Assembly to pay remuneration and allowances to any person so appointed,
- (d) prescribing the grounds on which an application for the review of a provisional decision may be made, and
- (e) requiring the relevant authority to reconsider its provisional decision having regard to any recommendation of the person or panel.

*Supplementary***40 Provision of information**

- (1) If so requested by the Director, the Higher Education Funding Council for England and the Teacher Training Agency must provide the Director with any information which is in its possession and is reasonably required by the Director for the purposes of his functions.
- (2) If so requested by the Higher Education Funding Council for England or the Teacher Training Agency, the Director must provide the Council or the Agency with any information which is in his possession and is reasonably required by either of those bodies for the purposes of its functions.

**41 Interpretation of Part 3**

- (1) In this Part –
  - “course” does not include any part-time or postgraduate course other than a course of initial teacher training;
  - “the Director” has the meaning given by section 31(1);
  - “English approved plan” has the meaning given by section 22(b);
  - “fees”, in relation to undertaking a course, means fees in respect of, or otherwise in connection with, undertaking the course, including admission, registration, tuition and graduation fees but excluding –
    - (a) fees payable to an institution for awarding or accrediting any qualification where the institution does not provide the whole or part of the course and is not a publicly-funded institution (as defined by subsection (2)),
    - (b) fees payable for board or lodging,
    - (c) fees payable for field trips (including any tuition element of such fees),

- (d) fees payable for attending any graduation or other ceremony, and
  - (e) such other fees as may be prescribed –
    - (i) in relation to England, by regulations made by the Secretary of State, or
    - (ii) in relation to Wales, by regulations made by the Assembly;
- “governing body”, in relation to an institution, has the meaning given by section 90(1) of the 1992 Act, but subject to any provision made by virtue of section 90(2) of that Act;
- “general provisions”, in relation to a plan, has the meaning given by section 33(4);
- “plan” has the meaning given by section 22(a);
- “the relevant authority” has the meaning given by section 30(1);
- “Welsh approved plan” has the meaning given by section 22(b).
- (2) In subsection (1) “publicly-funded institution” means –
- (a) any university or other institution receiving grants, loans or other payments under section 65 of the 1992 Act, or under section 5 of the 1994 Act, any institution maintained by a local education authority in the exercise of their further and higher education functions, any institution receiving a recurrent grant towards its costs under regulations made under section 485 of the Education Act 1996 (c. 56) or any institution receiving financial resources under section 5 or 34 of the Learning and Skills Act 2000 (c. 21);
  - (b) any institution within the higher education sector for the purposes of the Further and Higher Education (Scotland) Act 1992 (c. 37), any college of further education within the meaning of section 36(1) of that Act or any central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c. 44);
  - (c) the Queen’s University of Belfast, the University of Ulster, a college of education in Northern Ireland within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)) or any institution providing in Northern Ireland further education as defined in Article 3 of the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)).

## PART 4

### STUDENT SUPPORT

#### 42 Effect of bankruptcy

- (1) In section 22 of the 1998 Act (arrangements for giving financial support to students), after subsection (3)(e) insert –
- “(f) with respect to the effect of bankruptcy upon a borrower’s liability to make repayments in respect of such a loan (whether the repayments relate to sums which the borrower receives, or is entitled to receive, before or after the commencement of the bankruptcy).”
- (2) In section 46(8) of the 1998 Act (provisions that extend to Northern Ireland), in the entry relating to section 22 for “(3)(e)” substitute “(3)(e) or (f)”.



- (3) Subsection (4) has effect in relation to the Education (Student Loans) Act 1990 (c. 6) to the extent that it continues in force by virtue of any savings made, in connection with its repeal by the 1998 Act, by an order under section 46(4) of the 1998 Act.
- (4) Schedule 2 to the Education (Student Loans) Act 1990 (loans for students) is to have effect as if in paragraph 5(2) (liabilities relating to student loans not to be included in bankruptcy debts) the reference to “any such sum” were a reference to “any sums to which this paragraph applies”.
- (5) Nothing in this section affects any bankruptcy commencing before this section comes into force.

#### **43 Other amendments of section 22 of Teaching and Higher Education Act 1998**

- (1) Section 22 of the 1998 Act (arrangements for giving financial support to students) is amended as follows.
- (2) In subsection (2)(i), for “who have previously made loans of any prescribed description to those persons” substitute “to whom those persons are liable to make payments”.
- (3) Omit subsection (7) (which provides that regulations made by virtue of subsection (2)(b) of that section are to be subject to affirmative resolution procedure in certain circumstances).

#### **44 Transfer of certain functions to National Assembly for Wales**

- (1) In relation to Wales, the functions of the Secretary of State under section 22 of the 1998 Act (arrangements for giving financial support to students) are hereby transferred to the Assembly, except so far as they relate to the making of any provision authorised by subsection (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of that section.
- (2) The functions of the Secretary of State under section 22 of the 1998 Act are to be exercisable concurrently with the Assembly so far as they relate to the making in relation to Wales of any provision authorised by subsection (2)(a), (c) or (k) of that section.
- (3) Regulations made under section 22 of the 1998 Act by the Secretary of State must provide that no provision made by virtue of subsection (5) of that section is to apply in relation to any loan made under that section by the Assembly unless the Assembly –
  - (a) has determined, in relation to any loan or description of loan, that repayments are to be collected by the Commissioners of Inland Revenue, and
  - (b) has given notice of that determination to the Secretary of State and to the person liable to make the repayments.
- (4) The functions of the Secretary of State under section 23 of the 1998 Act (transfer or delegation of functions relating to student support) are hereby transferred to the Assembly so far as they relate to functions which are exercisable by the Assembly under regulations under section 22 of that Act.
- (5) Until the commencement of subsection (4), the functions of the Secretary of State under subsections (7) and (8) of section 23 of the 1998 Act (power to make payments to body or person by whom function is exercisable by virtue of

subsection (1) or (4) of that section) are to be exercisable concurrently with the Assembly so far as they relate to payments to any body or person by whom there is exercisable any function that will after the commencement of subsections (1) and (2) be exercisable by the Assembly.

- (6) For the purposes of the Government of Wales Act 1998 (c. 38) –
- (a) any function that is transferred to the Assembly by subsection (1) or (4) or made exercisable by the Assembly by subsection (2) or (5) is to be taken to have been transferred to, or made exercisable by, the Assembly by an Order in Council under section 22 of that Act, and
  - (b) in relation to any function which is taken by virtue of paragraph (a) to have been transferred to the Assembly by such an Order in Council, any reference to the coming into force of the Order in Council transferring it is to be read as a reference to the commencement of the provision of this section by which the function is transferred.

#### **45 Supply of information held by student support authority**

- (1) Regulations may provide that a student support authority may supply student support information of a prescribed description to a prescribed person for a prescribed purpose.
- (2) A person may not be prescribed under subsection (1) unless the person –
  - (a) is the governing body of an institution with which eligible students (as defined for the purposes of the student support scheme) are undertaking courses, or
  - (b) is a person who appears to the Secretary of State or, as the case may be, the Assembly to be exercising functions of a public nature.
- (3) Regulations under subsection (1) may not allow information to be supplied except with the consent of every individual to whom the information relates, given in such manner as may be prescribed.
- (4) Subsection (3) does not apply to the supply of information for the purposes of any civil or criminal proceedings arising out of the student support scheme.
- (5) Regulations under subsection (1) may provide that information may be supplied under such regulations only if prescribed conditions are met.
- (6) This section does not limit the circumstances in which information may be supplied apart from this section.
- (7) In this section “student support authority” means –
  - (a) the Secretary of State,
  - (b) any authority or governing body by whom any function of the Secretary of State is for the time being exercisable to any extent by virtue of section 23(1) of the 1998 Act,
  - (c) any person acting on behalf of the Secretary of State to any extent by virtue of section 23(4) of the 1998 Act,
  - (d) the Assembly,
  - (e) any authority or governing body by whom any function of the Assembly is for the time being exercisable to any extent by virtue of section 23(1) of the 1998 Act, and
  - (f) any person acting on behalf of the Assembly to any extent by virtue of section 23(4) of the 1998 Act.

- (8) In this section –
- “prescribed” means prescribed by regulations;
- “regulations” means –
- (a) in relation to a student support authority falling within any of paragraphs (a) to (c) of subsection (7), regulations made by the Secretary of State, and
  - (b) in relation to a student support authority falling within any of paragraphs (d) to (f) of subsection (7), regulations made by the Assembly;
- “student support scheme” means the provisions of regulations under section 22 of the 1998 Act;
- “student support information”, in relation to a student support authority, means any information which the student support authority holds in connection with, or in consequence of, the exercise of any function relating to the operation of the student support scheme.

## PART 5

### MISCELLANEOUS AND GENERAL

#### *Staff disputes: jurisdiction of visitor*

#### **46 Exclusion of visitor’s jurisdiction in relation to staff disputes**

- (1) The visitor of a qualifying institution has no jurisdiction in respect of –
  - (a) any dispute relating to a member of staff which concerns his appointment or employment or the termination of his appointment or employment,
  - (b) any other dispute between a member of staff and the qualifying institution in respect of which proceedings could be brought before any court or tribunal, or
  - (c) any dispute as to the application of the statutes or other internal laws of the institution in relation to a matter falling within paragraph (a) or (b).
- (2) In subsection (1) “qualifying institution” has the meaning given by section 11.
- (3) In determining whether a dispute falls within subsection (1)(b) it is to be assumed that the visitor does not have jurisdiction to determine the dispute.
- (4) Section 206 of the Education Reform Act 1988 (c. 40) (which is superseded by subsection (1)) shall cease to have effect.

#### *General*

#### **47 Orders and regulations**

- (1) Any power –
  - (a) of the Secretary of State or the Assembly to make an order or regulations under this Act, or
  - (b) of the Scottish Ministers to make an order under this Act,
 is exercisable by statutory instrument.

- (2) Any statutory instrument containing –
  - (a) an order made by the Secretary of State under section 18, or
  - (b) regulations made by the Secretary of State under any provision of this Act,is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subsection (2) does not apply to –
  - (a) regulations to which section 26(1) or (2)(a)(ii) or (b)(ii) applies,
  - (b) regulations to which paragraph 12(3) of Schedule 2 applies, or
  - (c) regulations to which subsection (4) applies.
- (4) A statutory instrument which contains (whether alone or with other provisions) regulations made by the Secretary of State by virtue of section 33(2), 34 or 37(3)(c) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Any order or regulations under this Act may –
  - (a) make different provision for different cases or different areas,
  - (b) make provision generally or only in relation to specified cases, and
  - (c) contain such incidental, supplemental, saving or transitional provisions as the person making the order or regulations thinks fit.
- (6) Nothing in this Act is to be regarded as affecting the generality of subsection (5).

#### **48 General interpretation**

In this Act –

- “the 1992 Act” means the Further and Higher Education Act 1992 (c. 13);
- “the 1994 Act” means the Education Act 1994 (c. 30);
- “the 1998 Act” means the Teaching and Higher Education Act 1998 (c. 30);
- “the Assembly” means the National Assembly for Wales.

#### **49 Consequential amendments**

Schedule 6 contains amendments related to the provisions of this Act.

#### **50 Repeals**

Schedule 7 contains repeals.

#### **51 Financial provisions**

- (1) There shall be paid out of money provided by Parliament –
  - (a) any expenditure incurred by the Secretary of State by virtue of this Act, and
  - (b) any increase attributable to this Act in the sums which by virtue of any other Act are payable out of money so provided.
- (2) There shall be paid into the Consolidated Fund any sums received by a Minister of the Crown by virtue of this Act.

**52 Commencement**

- (1) The following provisions come into force on the passing of this Act—
  - section 22, so far as relating to England;
  - section 24(6), so far as enabling regulations to be made;
  - section 26;
  - section 29, so far as relating to England;
  - section 30(1), so far as relating to England;
  - section 31;
  - section 32(1);
  - sections 33 and 34, so far as relating to England;
  - sections 35 to 37, so far as enabling regulations to be made in relation to England;
  - section 39, so far as relating to England;
  - section 40;
  - section 41, so far as relating to England;
  - section 42;
  - sections 47 and 48;
  - section 51, this section and sections 53 and 54;
  - Schedule 5; and
  - paragraph 1 of Schedule 6 and, so far as relating to the Director of Fair Access to Higher Education, paragraphs 4 and 10 of that Schedule (and section 49 so far as relating to those provisions).
- (2) The following provisions (so far as not coming into force in accordance with subsection (1)) come into force in accordance with provision made by the Secretary of State by order—
  - Part 1, except section 10(2) and (3);
  - section 19;
  - section 23;
  - section 37;
  - section 43;
  - section 45;
  - paragraphs 2 to 6 and 9 and 10 of Schedule 6 (and section 49 so far as relating to those paragraphs); and
  - in Schedule 7, the repeals in the Superannuation Act 1972 (c. 11) and in section 22 of the 1998 Act (and section 50 so far as relating to those repeals).
- (3) The following provisions come into force in accordance with provision made by the Assembly by order—
  - section 10(2);
  - sections 27 and 28;
  - section 30(2) and (3);
  - section 32(2);
  - section 38; and
  - section 44.
- (4) The Assembly may not make an order under subsection (3) in relation to section 44 except with the agreement of the Secretary of State.

- (5) Section 10(3) comes into force in accordance with provision made by the Scottish Ministers by order.
- (6) Except as provided by subsections (1) to (5), the provisions of this Act come into force –
  - (a) in relation to England, in accordance with provision made by the Secretary of State by order, and
  - (b) in relation to Wales, in accordance with provision made by the Assembly by order.

### **53 Extent**

- (1) Subject to subsections (2) to (4), this Act extends to England and Wales only.
- (2) The following provisions also extend to Scotland and Northern Ireland –
  - (a) Part 1,
  - (b) section 45,
  - (c) sections 47, 48, 51 and 52, and
  - (d) this section and section 54.
- (3) Subsections (1), (2) and (5) of section 42 also extend to Northern Ireland.
- (4) Any amendment or repeal made by this Act has the same extent within the United Kingdom as the enactment to which it relates.

### **54 Short title, etc.**

- (1) This Act may be cited as the Higher Education Act 2004.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).

## SCHEDULES

### SCHEDULE 1

Section 13

#### CONDITIONS TO BE MET BY OPERATOR OF STUDENT COMPLAINTS SCHEME

##### *Introduction*

- 1 This Schedule sets out the conditions referred to in section 13(3)(a) (and other provisions of Part 2 of this Act).

##### *Suitability*

- 2 Condition A is that the body corporate is a suitable person to be the designated operator.

##### *Capability*

- 3 Condition B is that the body corporate is capable of providing in an effective manner, on and after the effective date, a scheme for the review of qualifying complaints which meets all of the conditions set out in Schedule 2.

### SCHEDULE 2

Section 13

#### CONDITIONS TO BE MET BY STUDENT COMPLAINTS SCHEME

##### *Introduction*

- 1 This Schedule sets out the conditions referred to in section 13(3)(b) (and other provisions of Part 2 of this Act).

##### *Qualifying institutions*

- 2 Condition A is that at any given time the scheme relates (as the case may be) –
  - (a) to every institution in England,
  - (b) to every institution in Wales, or
  - (c) to every institution in England and Wales,that is a qualifying institution at that time.

*Referral of qualifying complaints*

- 3 (1) Condition B is that the scheme provides that every qualifying complaint made about the qualifying institutions to which it relates is capable of being referred under the scheme.
- (2) A scheme does not fail to meet condition B only because it contains some or all of the following –
- (a) provision that qualifying complaints are to be referred under the scheme within a time limit specified in, or determined in accordance with, the scheme;
  - (b) provision that, where a qualifying complaint is made about a qualifying institution which provides an internal procedure for the review of complaints, the complaint is not to be referred under the scheme until the complainant has exhausted the internal procedure;
  - (c) provision that a qualifying complaint is not to be referred under the scheme if –
    - (i) relevant proceedings have been concluded, or
    - (ii) relevant proceedings that have not been concluded have not been stayed.
- (3) In sub-paragraph (2)(c) “relevant proceedings” means proceedings relating to the subject matter of the qualifying complaint that have been brought at first instance before a court or tribunal.

*Individuals to review complaints*

- 4 Condition C is that the scheme requires every qualifying complaint referred under the scheme to be reviewed by an individual who –
- (a) is independent of the parties, and
  - (b) is suitable to review that complaint.

*Review of complaint*

- 5 (1) Condition D is that the scheme requires a reviewer –
- (a) to make a decision as to the extent to which a qualifying complaint is justified; and
  - (b) to make that decision as soon as reasonably practicable.
- (2) A scheme does not fail to meet condition D only because it contains provision that a reviewer may dismiss a qualifying complaint without consideration of the merits if the reviewer considers the complaint to be frivolous or vexatious.

*Recommendation of reviewer if complaint justified*

- 6 Condition E is that the scheme provides that, in a case where a reviewer decides that a qualifying complaint is to any extent justified, the reviewer –
- (a) may recommend the governing body of the institution to which the complaint relates –
    - (i) to do anything specified in the recommendation (which may include the payment of sums so specified), and
    - (ii) to refrain from doing anything so specified, but
  - (b) may not require any person to do, or refrain from doing, anything.



*Reviewers to notify parties of decisions, recommendations etc.*

- 7 Condition F is that the scheme requires a reviewer to notify the parties to a qualifying complaint in writing of –
- (a) the decision the reviewer has made,
  - (b) the reviewer’s reasons for making that decision, and
  - (c) if the reviewer makes a recommendation –
    - (i) that recommendation, and
    - (ii) the reviewer’s reasons for making that recommendation.

*Fees*

- 8 Condition G is that the scheme does not require complainants to pay any fees in connection with the operation of the scheme.
- 9 Condition H is that any fees payable under the scheme by the qualifying institutions to which it relates do not exceed the amount incurred by the operator, taking one year with another, in providing the scheme in relation to those institutions.

*Scheme also applying to bodies that are not qualifying institutions*

- 10 (1) A scheme does not fail to meet the conditions in this Schedule only because it also relates to bodies that are not qualifying institutions.
- (2) A scheme which relates to such bodies does not fail to meet the conditions in this Schedule only because the provisions of the scheme that apply to such bodies do not meet those conditions.

*Interpretation*

- 11 In this Schedule –
- “complainant” means the person making a qualifying complaint;
- “parties”, in relation to a qualifying complaint, means –
- (a) the complainant, and
  - (b) the governing body of the institution about which the complaint is made;
- “reviewer”, in relation to the review of a qualifying complaint under a scheme, means the individual who is reviewing the complaint.

*Power to amend this Schedule*

- 12 (1) Regulations may amend the preceding provisions of this Schedule.
- (2) In sub-paragraph (1) “regulations” means regulations made –
- (a) in relation to schemes relating to qualifying institutions in England, by the Secretary of State, or
  - (b) in relation to schemes relating to qualifying institutions in Wales, by the Assembly.
- (3) No regulations may be made by the Secretary of State under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

SCHEDULE 3

Section 14

DUTIES OF DESIGNATED OPERATOR OF STUDENT COMPLAINTS SCHEME

*Introduction*

- 1 This Schedule sets out the duties referred to in section 14 and the period during which those duties must be complied with.

*Provision of scheme*

- 2 The designated operator must provide a scheme for the review of qualifying complaints which meets all of the conditions set out in Schedule 2.

*Publication of scheme*

- 3 The designated operator must publish the latest version of the scheme in such manner as it thinks fit.

*Changes to scheme*

- 4 The designated operator must not make any change to a provision of the scheme to which a condition set out in Schedule 2 relates unless the operator has first—
  - (a) consulted interested parties about the proposed change, and
  - (b) notified the Secretary of State or the Assembly (as the case requires) of the proposed change.

*Compliance with scheme*

- 5 The designated operator must comply with any requirements that the scheme imposes on it.

*Annual report*

- 6 (1) The designated operator must—
  - (a) produce an annual report on the scheme and its operation, and
  - (b) publish the report in such manner as it thinks fit.(2) The report must include information about—
  - (a) complaints referred under the scheme,
  - (b) the decisions and recommendations made by reviewers,
  - (c) the extent to which recommendations made by reviewers have been followed, and
  - (d) the way in which the operator has used the fees (if any) paid in connection with the scheme.

*Review*

- 7 (1) This paragraph applies if the Secretary of State or the Assembly requests the designated body to—
  - (a) conduct a review of the scheme or its operation (or any aspect of either of those matters), and
  - (b) report the results of the review to the Secretary of State or Assembly.

- (2) The designated body must comply with the request within such time as may be specified by the Secretary of State or the Assembly.
- (3) In conducting the review, the designated body must comply with any particular requirements imposed by the Secretary of State or the Assembly.

*Supply of information*

- 8 The designated operator must provide the Secretary of State or the Assembly with such information about itself, and the scheme and its operation, as the Secretary of State or the Assembly may reasonably require for the purposes of his or the Assembly's functions under Part 2 of this Act.

*Period during which the designated operator must comply with duties*

- 9 (1) The duties set out in this Schedule apply from the relevant date and cease to apply only if the designation is terminated.
- (2) The "relevant date" means—
  - (a) in relation to the duties set out in paragraphs 3, 4, 5 and 8, the date on which notice of designation is received in accordance with section 13(4)(a), and
  - (b) in relation to the duties set out in the other paragraphs, the effective date of the designation.

*Duties to publish information: further provision*

- 10 Where by virtue of this Schedule the designated operator is under a duty to publish information, it must, in choosing the manner in which the information is to be published, have regard to the object of making that information available to interested parties.

## SCHEDULE 4

Section 16

## TERMINATION OF DESIGNATION OF OPERATOR OF STUDENT COMPLAINTS SCHEME

## PART 1

## CIRCUMSTANCES IN WHICH DESIGNATION TERMINATED

*Introduction*

- 1 This Part of this Schedule sets out the circumstances in which the designation of a body corporate under section 13 is terminated.

*Agreement*

- 2 The designation is terminated if the designated operator and the Secretary of State or the Assembly (as the case may be) make an agreement which specifies a date when the designation is to terminate.
- 3 In this case the designation is terminated on the date specified in the agreement.

*Notice given by the designated operator*

- 4 (1) The designation is terminated if the designated operator gives the Secretary of State or the Assembly (as the case may be) notice which specifies a date when the designation is to terminate.
- (2) Notice under this paragraph is valid only if the period between –
- (a) the date when the notice is given, and
  - (b) the date specified in the notice,
- is one year or longer.
- 5 In this case the designation is terminated on the date specified in the notice.

*Notice given by Secretary of State or Assembly*

- 6 (1) The designation is terminated if the Secretary of State or the Assembly (as the case may be) gives the designated operator notice which specifies a date when the designation is to terminate.
- (2) Notice under this paragraph may not be given unless the Secretary of State or the Assembly –
- (a) is no longer satisfied that the designated operator meets all of the conditions in Schedule 1, or
  - (b) is satisfied that the designated operator has failed to comply with section 14.
- (3) Notice under this paragraph is valid only if the period between –
- (a) the date when the notice is given, and
  - (b) the date specified in the notice,
- is such as the Secretary of State or the Assembly considers reasonable.
- 7 In this case the designation is terminated on the date specified in the notice.

*Operator ceases to exist*

- 8 The designation is terminated if the designated operator ceases to exist.
- 9 In this case the designation is terminated on the date when the operator ceases to exist.

PART 2

AGREEMENT MADE OR NOTICE GIVEN UNDER PART 1: SUPPLEMENTARY PROVISION

*Introduction*

- 10 (1) This Part of this Schedule applies where –
- (a) the designated operator and the Secretary of State or the Assembly have made an agreement under paragraph 2,
  - (b) the designated operator has given notice under paragraph 4, or
  - (c) the Secretary of State or the Assembly has given notice under paragraph 6.
- (2) In this Part –
- “original instrument of termination” means the agreement or notice referred to in sub-paragraph (1);

“termination date” means the date specified in an agreement under paragraph 2, or notice under paragraph 4 or 6, as the date when the designation in question is to terminate.

*Effect of agreement or notice on provisions of Part 1 of Schedule*

- 11 (1) Where this Part of this Schedule applies –
- (a) the designated operator and the Secretary of State or the Assembly may not make an agreement, or a new agreement, under paragraph 2,
  - (b) the designated operator may not give a notice, or a new notice, under paragraph 4, and
  - (c) the Secretary of State or the Assembly may not –
    - (i) give a notice under paragraph 6 except in accordance with sub-paragraph (2) below, or
    - (ii) give a new notice under paragraph 6.
- (2) The Secretary of State or the Assembly may give a notice under paragraph 6 if –
- (a) the original instrument of termination is –
    - (i) an agreement under paragraph 2, or
    - (ii) a notice under paragraph 4, and
  - (b) the termination date specified in the notice under paragraph 6 falls before the termination date specified in the original instrument of termination.

*Circumstances in which agreement or notice superseded*

- 12 The original instrument of termination is superseded only if –
- (a) notice under paragraph 6 is given in accordance with paragraph 11(2), or
  - (b) the designation in question is terminated in accordance with paragraph 8 (operator ceases to exist).

*Agreement or notice not capable of variation or cancellation or revocation*

- 13 (1) An agreement made under paragraph 2 may not be varied or cancelled.  
 (2) Accordingly such an agreement continues in force until –
- (a) the designation is terminated in accordance with the agreement, or
  - (b) the agreement is superseded in accordance with paragraph 12.
- 14 (1) Notice given under paragraph 4 or 6 may not be varied or revoked.  
 (2) Accordingly such notice continues in force until –
- (a) the designation is terminated in accordance with the notice, or
  - (b) the notice is superseded in accordance with paragraph 12.

SCHEDULE 5

Section 31

THE DIRECTOR OF FAIR ACCESS TO HIGHER EDUCATION: SUPPLEMENTARY PROVISIONS

*Status, appointment and remuneration of Director*

- 1 The Director and his staff are not to be regarded as servants or agents of the Crown.
- 2 (1) The Director is to hold and vacate office in accordance with the terms of his appointment, but—
  - (a) may not be appointed for a term of more than three years, and
  - (b) may at any time resign by giving written notice to the Secretary of State.
- (2) The previous appointment of a person as Director does not affect his eligibility for re-appointment.
- 3 There are to be paid to the Director such remuneration and allowances as the Secretary of State may determine.

*Staff*

- 4 (1) The Director may appoint such staff as he may determine.
- (2) The remuneration and other conditions of service of any person appointed under this paragraph are to be determined by the Director.

*Arrangements with Higher Education Funding Council for England*

- 5 The Director and the Higher Education Funding Council for England may enter into arrangements with each other for the provision to the Director by the Council, on such terms as may be agreed, of staff, accommodation or services.

*Finance*

- 6 The Secretary of State may make payments to the Director.

*Reports*

- 7 (1) The Director must provide to the Secretary of State, as soon as possible after the end of each financial year, a report on how he has performed his functions during that year.
- (2) The Secretary of State may by direction require the Director, either in a report under sub-paragraph (1) or in a special report, to report to him on such matters related to access to higher education as may be specified in the direction.
- (3) The Secretary of State must lay before each House of Parliament a copy of each report provided to him under this paragraph; and the Director must publish the report once it has been so laid.
- (4) In this paragraph and paragraph 8 “financial year” means—
  - (a) the period beginning with the date on which the first Director takes office and ending with the next 31st March, and
  - (b) each subsequent period of twelve months ending with 31st March.

*Accounts*

- 8 (1) It is the duty of the Director –
- (a) to keep proper accounts and proper records in relation to the accounts,
  - (b) to prepare in respect of each financial year a statement of the accounts in such form as the Secretary of State may direct, and
  - (c) to send copies of the statement to the Secretary of State and the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.
- (2) The Comptroller and Auditor General must examine, certify and report on each statement received by him in pursuance of this paragraph, and must lay copies of each statement and of his report before each House of Parliament.

## SCHEDULE 6

Section 49

## CONSEQUENTIAL AMENDMENTS

*Public Records Act 1958 (c. 51)*

- 1 In Schedule 1 to the Public Records Act 1958 (definition of public records) in Part 2 of the Table at the end of paragraph 3 (other establishments and organisations) insert at the appropriate place “Director of Fair Access to Higher Education”.

*Parliamentary Commissioner Act 1967 (c. 13)*

- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation), insert at the appropriate place “The Arts and Humanities Research Council.”.

*Superannuation Act 1972 (c. 11)*

- 3 In Schedule 1 to the Superannuation Act 1972 (which lists the kinds of employment etc. to which a scheme under that Act can apply) omit “The Arts and Humanities Research Board”.

*House of Commons Disqualification Act 1975 (c. 24)*

- 4 In Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership), in Part 3 (other disqualifying offices) insert at the appropriate places –
- “Chairman, Deputy Chairman or Chief Executive of the Arts and Humanities Research Council.”, and
- “Director of Fair Access to Higher Education.”

*Patents Act 1977 (c. 37)*

- 5 In section 41 of the Patents Act 1977 (amount of compensation awarded to employees in relation to patent for an invention), in subsection (3) after

“Science and Technology Act 1965” insert “or the Arts and Humanities Research Council (as defined by section 1 of the Higher Education Act 2004)”.

*Further Education Act 1985 (c. 47)*

- 6 In section 2 of the Further Education Act 1985 (power of local education authorities to supply goods or services through further or higher education institutions), in subsection (4)(a) after “Science and Technology Act 1965” insert “or for the Arts and Humanities Research Council (as defined by section 1 of the Higher Education Act 2004)”.

*Teaching and Higher Education Act 1998 (c. 30)*

- 7 Omit section 26 of the 1998 Act (imposition of conditions as to fees at further or higher education institutions).
- 8 In section 28 of the 1998 Act (interpretation of Chapter 1 of Part 2), in subsection (1) omit the definitions of “fees” and “publicly-funded institution”.
- 9 In section 42 of the 1998 Act (orders and regulations), for subsection (5) substitute—
- “(5) That subsection also does not apply to any other regulations under section 22 a draft of which has been laid before, and approved by a resolution of, each House of Parliament.”

*Freedom of Information Act 2000 (c. 36)*

- 10 In Schedule 1 to the Freedom of Information Act 2000 (public authorities for the purposes of the Act), in Part 6 (other public bodies and offices: general), insert at the appropriate places—
- “The Arts and Humanities Research Council.”, and
- “The Director of Fair Access to Higher Education.”

SCHEDULE 7

Section 50

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Superannuation Act 1972 (c. 11)	In Schedule 1, the entry relating to the Arts and Humanities Research Board.
Education Reform Act 1988 (c. 40)	Section 206. In section 207(1), paragraph (c) and the word “or” immediately preceding it.
Teaching and Higher Education Act 1998 (c. 30)	In section 22, subsection (7) and, in subsection (8), the words “or (7)(a)”. Section 26. In section 28(1), the definitions of “fees” and “publicly-funded institution”.



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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Learning and Skills Act 2000 (c. 21)	Section 146(4) and (5). In Schedule 9, paragraphs 74 and 75.

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