

HIGHER EDUCATION ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 3 – Student Fees and Fair Access

Imposition of conditions as to fees

39. [Sections 23](#) and [24](#) replace section 26 of the Teaching and Higher Education Act 1998 in relation to England (for provision relating to Wales see sections 27 and 28). They require the Secretary of State, when making grants to the Higher Education Funding Council for England (HEFCE) or the Teacher Training Agency (TTA), to impose a condition that the body to which the grant is made, when making a grant to an institution, in turn imposes the following condition:
- For institutions with an approved plan, the condition is that the fees payable do not exceed the amounts specified in the plan, and also that the institution complies with the rest of the plan. The fees set out in the plan may not exceed the fee cap set by regulations, referred to in the legislation as ‘the higher amount’.
 - For institutions without an approved plan, the condition is that fees do not exceed the ‘basic amount’ (equivalent to the present standard fee) which will also be specified in regulations.
40. The condition must set out that, for institutions with an approved plan, if the fee limit in the plan is exceeded, HEFCE or TTA are to impose financial sanctions at the direction of the Director of Fair Access to Higher Education relating to the institution’s grant, unless fees exceed the higher amount. In that case, in addition to any sanction imposed by the Director, HEFCE may impose sanctions, the principles governing which will be set out by the Secretary of State. In addition, where the conditions of the plan other than those relating to fee levels are breached, the Director may direct HEFCE or TTA to impose financial requirements.
41. Similarly, HEFCE may impose sanctions on any institution without an approved plan which charges fees higher than the basic amount.
42. [Section 24\(6\)](#) provides that the basic and higher amounts are to be prescribed by regulations made by the Secretary of State.
43. [Section 25](#) makes a transitional provision which prevents fees above the basic amount being charged for students receiving offers of a place in 2005, whether for immediate entry or for deferred entry in 2006, or for students unable to accept a place in sufficient time because of the delay caused by a successful appeal against A-level results affecting entry to higher education.
44. [Section 26](#) provides that the first regulations under section 24(6) setting the basic and higher amounts must be laid in draft and approved by a resolution of each House of Parliament. The same procedure will apply to any further regulations increasing the basic amount by more than is needed to keep up with inflation. Section 26 also provides that once the first set of regulations setting a higher amount have been made, that amount

*These notes refer to the Higher Education Act 2004
(c.8) which received Royal Assent on 1 July 2004*

cannot be raised in real terms until 2nd January 2010 at the earliest. After that date, regulations raising the higher amount in real terms can only be made once a resolution has been passed in both Houses that the amount should be raised to a specified level.

45. [Sections 27](#) and [28](#) provide for an equivalent system in Wales, where the National Assembly may impose an equivalent condition on the Higher Education Funding Council for Wales, and in place of the Director, a plan must be approved by the relevant authority, a body which the National Assembly may designate as set out in section 30. The power to designate the relevant authority in Wales includes power to modify any enactment as necessary or expedient in connection with the designation. This is to ensure that whatever body the Assembly may choose to designate is able to carry out its functions effectively.
46. [Section 29](#) re-enacts provisions in section 26 of the Teaching and Higher Education Act 1998 covering the exclusion of international students from the provisions limiting fees, restrictions on the Secretary of State's power to discriminate between certain classes of courses in prescribing descriptions of courses covered by these sections, and disapplying some elements of previous Acts with respect to these sections.