



# Higher Education Act 2004

## 2004 CHAPTER 8

### PART 3

#### STUDENT FEES AND FAIR ACCESS

##### *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.

#### Commencement Information

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| <b>I1</b> | S. 30 partly in force; s. 30(1) in force for E. at Royal Assent, see s. 52(1)                      |
| <b>I2</b> | S. 30(1) in force at 31.3.2011 for W. by <a href="#">S.I. 2011/297</a> , <a href="#">art. 4(b)</a> |
| <b>I3</b> | S. 30(2)(3) in force at 31.3.2011 by <a href="#">S.I. 2011/297</a> , <a href="#">art. 3(d)</a>     |

### 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”).

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- (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 [<sup>F1</sup>financial assistance from the Secretary of State under section 14 of the Education Act 2002 ].
- (6) Schedule 5 makes further provision about the Director.

#### Textual Amendments

- F1** Words in s. 31(5) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 5 para. 24; S.I. 2012/924, art. 2](#)

## 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.

#### Commencement Information

- I4** S. 32 partly in force; s. 32(1) in force at Royal Assent, see s. 52(1)  
**I5** S. 32(2)(3) in force for E. at 1.11.2004 by S.I. 2004/2781, art. 2  
**I6** S. 32(4) in force at 31.3.2011 by S.I. 2011/297, art. 3(e)

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### 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—

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- (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.

#### Commencement Information

- I7** S. 33 partly in force; s. 33 in force for E. at Royal Assent, see s. 52(1)
- I8** S. 33 in force at 11.2.2011 for specified purposes for W. by S.I. 2011/297, art. 2(c)
- I9** S. 33 in force at 31.3.2011 for W. in so far as not already in force by S.I. 2011/297, art. 4(c)

### 34 Approval of plans

- [<sup>F2</sup>(1) The governing body of any institution which—
- (a) is or may become eligible to receive grants under section 65 of the 1992 Act or section 86 of the 2005 Act, or
  - (b) provides higher education and is or may become eligible to receive financial assistance from the Secretary of State under section 14 of the Education Act 2002,
- 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.

#### Textual Amendments

- F2** S. 34(1) substituted (1.4.2012) by Education Act 2011 (c. 21), s. 82(3), Sch. 5 para. 25; S.I. 2012/924, art. 2

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#### Commencement Information

- I10** S. 34 partly in force; s. 34 in force for E. at Royal Assent, see s. 52(1)  
**I11** S. 34 in force at 11.2.2011 for specified purposes for W. by [S.I. 2011/297](#), [art. 2\(c\)](#)  
**I12** S. 34 in force at 31.3.2011 for W. in so far as not already in force by [S.I. 2011/297](#), [art. 4\(c\)](#)

### 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.

#### Commencement Information

- I13** S. 35 partly in force; s. 35 in force for certain purposes for E. at Royal Assent, see s. 52(1)  
**I14** S. 35 in force at 1.11.2004 by [S.I. 2004/2781](#), [art. 2](#)  
**I15** S. 35 in force at 11.2.2011 for specified purposes for W. by [S.I. 2011/297](#), [art. 2\(c\)](#)  
**I16** S. 35 in force at 31.3.2011 for W. in so far as not already in force by [S.I. 2011/297](#), [art. 4\(c\)](#)

### 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.

#### Commencement Information

- I17** S. 36 partly in force; s. 36 in force for certain purposes for E. at Royal Assent, see s. 52(1)  
**I18** S. 36 in force at 1.11.2004 by [S.I. 2004/2781](#), [art. 2](#)  
**I19** S. 36 in force at 11.2.2011 for specified purposes for W. by [S.I. 2011/297](#), [art. 2\(c\)](#)  
**I20** S. 36 in force at 31.3.2011 for W. in so far as not already in force by [S.I. 2011/297](#), [art. 4\(c\)](#)

### 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 <sup>F3</sup>Secretary of State ] (or both) to impose specified financial requirements on the governing body under section 24(3), or

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- (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).

#### Textual Amendments

- F3** Words in s. 37(1)(a) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 5 para. 26](#); [S.I. 2012/924, art. 2](#)

#### Commencement Information

- I21** S. 37 partly in force; s. 37 in force for certain purposes for E. at Royal Assent, see s. 52(1)
- I22** S. 37 in force in so far as not already in force at 1.11.2004 by [S.I. 2004/2781, art. 3](#)

### 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<sup>F4</sup>... 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).

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#### Textual Amendments

- F4** Words in s. 38(4) omitted (1.4.2012) by virtue of [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 5 para. 27](#); [S.I. 2012/924](#), [art. 2](#)

#### Commencement Information

- I23** S. 38 in force at 11.2.2011 for specified purposes by [S.I. 2011/297](#), [art. 2\(d\)](#)  
**I24** S. 38 in force at 31.3.2011 in so far as not already in force by [S.I. 2011/297](#), [art. 3\(f\)](#)

### 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.

#### Commencement Information

- I25** S. 39 partly in force; s. 39 in force for E. at Royal Assent, see s. 52(1)  
**I26** S. 39 in force at 11.2.2011 for specified purposes for W. by [S.I. 2011/297](#), [art. 2\(e\)](#)  
**I27** S. 39 in force at 31.3.2011 for W. in so far as not already in force by [S.I. 2011/297](#), [art. 4\(d\)](#)

**Status:**

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**Changes to legislation:**

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