



Higher Education Act 2004

2004 CHAPTER 8

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;

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“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—

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- (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—

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- (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,

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- (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,

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- (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.

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- (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.

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- (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);

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- (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 \(N.I. 15\)](#)).