



# Higher Education Act 2004

## 2004 CHAPTER 8

### 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- (4) Section 206 of the Education Reform Act 1988 (c. 40) (which is superseded by subsection (1)) shall cease to have effect.

#### **Commencement Information**

- 11** S. 46 in force for W. at 1.1.2005 by S.I. 2004/3144, Sch. Pt. 2 (with art. 6)
- 12** S. 46 in force for E. at 1.1.2005 by S.I. 2004/2781, art. 4 (with art. 5)

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## 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—
- <sup>F1</sup>(a) .....
  - (b) regulations to which paragraph 12(3) of Schedule 2 applies, or
  - <sup>F2</sup>(c) .....
- <sup>F3</sup>(4) .....
- (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).

#### Textual Amendments

- F1** S. 47(3)(a) omitted (1.4.2018) by virtue of [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 11 para. 30\(3\)\(a\)](#); S.I. 2018/241, reg. 2(s) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 13-16)
- F2** S. 47(3)(c) omitted (1.4.2018) by virtue of [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 11 para. 30\(3\)\(a\)](#); S.I. 2018/241, reg. 2(s) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 13-16)
- F3** S. 47(4) omitted (1.4.2018) by virtue of [Higher Education and Research Act 2017 \(c. 29\), s. 124\(5\), Sch. 11 para. 30\(3\)\(b\)](#); S.I. 2018/241, reg. 2(s) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 13-16)

### 48 General interpretation

In this Act—

“the 1992 Act” means the Further and Higher Education Act 1992 (c. 13);

<sup>F4</sup> ...

“the 1998 Act” means the Teaching and Higher Education Act 1998 (c. 30);

<sup>F5</sup> ...

“the Assembly” means the National Assembly for Wales.

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### Textual Amendments

- F4** Words in s. 48 repealed (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), (b), **Sch. 19 Pt. 3**
- F5** Words in s. 48 omitted (1.4.2018) by virtue of [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), **Sch. 11 para. 30(4)**; [S.I. 2018/241](#), reg. 2(s) (with transitional and savings provisions in [S.I. 2018/245](#), regs. 2, 3, 13-16)

## 49 Consequential amendments

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

### Commencement Information

- I3** [S. 49](#) partly in force; [s. 49](#) in force for certain purposes at Royal Assent, see [s. 52\(1\)](#)
- I4** [S. 49](#) in force for specified purposes at 16.12.2004 by [S.I. 2004/3255](#), **art. 2**
- I5** [S. 49](#) in force for specified purposes at 1.4.2005 by [S.I. 2005/767](#), **art. 2**
- I6** [S. 49](#) in force for specified purposes for W. at 7.7.2005 by [S.I. 2005/1833](#), **art. 4(f)**
- I7** [S. 49](#) in force at 14.1.2006 for specified purposes by [S.I. 2006/51](#), **art. 2**
- I8** [S. 49](#) in force at 31.3.2011 for specified purposes for W. by [S.I. 2011/297](#), **art. 4(e)**

## 50 Repeals

Schedule 7 contains repeals.

### Commencement Information

- I9** [S. 50](#) in force for specified purposes for E. at 1.1.2005 by [S.I. 2004/2781](#), **art. 4**
- I10** [S. 50](#) in force for specified purposes for W. at 1.1.2005 by [S.I. 2004/3144](#), **Sch. Pt. 2**
- I11** [S. 50](#) in force for specified purposes at 1.4.2005 by [S.I. 2005/767](#), **art. 2**
- I12** [S. 50](#) in force for specified purposes for W. at 7.7.2005 by [S.I. 2005/1833](#), **art. 4(d)**
- I13** [S. 50](#) in force at 14.1.2006 for specified purposes by [S.I. 2006/51](#), **art. 2**
- I14** [S. 50](#) in force at 31.3.2011 for specified purposes for W. by [S.I. 2011/297](#), **art. 4(f)**

## 51 Financial provisions

- (1) There shall be paid out of money provided by Parliament—
- any expenditure incurred by the Secretary of State by virtue of this Act, and
  - 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;

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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(4);
  - 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

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- (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).

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 11(1) s. 11 renumbered as s. 11(1) by [2022 asc 1 s. 128\(2\)\(a\)](#)
- s. 11(1)(a) words substituted by [2022 asc 1 Sch. 4 para. 16\(2\)](#)
- s. 11(2)-(5) inserted by [2022 asc 1 s. 128\(2\)\(b\)](#)
- s. 12(2A) inserted by [2022 asc 1 s. 128\(3\)\(a\)](#)
- Sch. 2 para. 3(2)(d) inserted by [2023 c. 16 Sch. para. 19](#)