

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.

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- (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.

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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—

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- (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

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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.

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Learning and Skills Act 2000 (c. 21)	In section 28(1), the definitions of “fees” and “publicly-funded institution”. Section 146(4) and (5). In Schedule 9, paragraphs 74 and 75.
