



Higher Education and Research Act 2017

2017 CHAPTER 29

PART 2

OTHER EDUCATION MEASURES

Financial support for students

PROSPECTIVE

86 Power to make alternative payments

- (1) Section 22 of the Teaching and Higher Education Act 1998 (power to give financial support to students) is amended in accordance with subsections (2) to (7).
- (2) In subsection (1), for “or loans” substitute “, loans or alternative payments”.
- (3) In subsection (2)—
 - (a) in paragraphs (a), (b) and (c), for “or loan” substitute “, loan or alternative payment”;
 - (b) in paragraph (g)—
 - (i) after “repayment” insert “, the making of contributions”, and
 - (ii) after “loans”, in each place, insert “ or alternative payments”;
 - (c) in paragraph (i), after “loans” insert “ or as part of alternative payments”, and
 - (d) in paragraph (j), for “or loans”, in each place, substitute “, loans or alternative payments”.
- (4) After subsection (4) insert—
 - “(4A) Regulations under this section may not provide for alternative payments to bear any interest.
 - (4B) The provision which may be made by virtue of subsection (2)(g) in relation to alternative payments under this section includes provision—

Status: Point in time view as at 01/08/2019. This version of this part contains provisions that are prospective.
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- (a) for a recipient of an alternative payment (an “AP recipient”) to be required to make, in such manner, at such times, and to such person or body as may be prescribed from time to time, contributions which together are equal to the aggregate of—
 - (i) the amount of the alternative payment, and
 - (ii) the amounts which would be required to be paid by virtue of subsection (3)(a) if the alternative payment were a loan;
- (b) for the payment, in respect of amounts overpaid by an AP recipient, of amounts which are the same as the amounts which would be required to be paid by virtue of subsection (3)(c) if the alternative payment were a loan;
- (c) for an AP recipient not to be liable to make any contribution in respect of an alternative payment—
 - (i) during such period as may be prescribed from time to time, or
 - (ii) in such circumstances as may be so prescribed,
 including provision for the cancellation of any further such liability of the recipient in any such circumstances;
- (d) in the case of alternative payments in connection with a higher education course, for the cancellation of the entitlement of an AP recipient to receive a sum as part of an alternative payment in such circumstances as may be prescribed by, or determined by the person making the regulations under, the regulations, where the payment of the sum has been suspended;
- (e) with respect to sums which an AP recipient receives, or is entitled to receive, as part of an alternative payment after the commencement of the recipient's bankruptcy or the date of the sequestration of the recipient's estate;
- (f) with respect to the effect of bankruptcy upon an AP recipient's liability to make contributions in respect of an alternative payment (whether the contributions relate to sums which the recipient receives, or is entitled to receive, before or after the commencement of the bankruptcy);
- (g) with respect to sums which an AP recipient receives, or is entitled to receive, as part of an alternative payment before or after a voluntary arrangement under Part 8 of the Insolvency Act 1986 or Part 8 of the Insolvency (Northern Ireland) Order 1989 (individual voluntary arrangements) takes effect in respect of the recipient;
- (h) excluding or modifying the application of Part 8 of that Act, or Part 8 of that Order, in relation to liability to make contributions in respect of an alternative payment (whether the contributions relate to sums which the AP recipient receives, or is entitled to receive, before or after a voluntary arrangement takes effect in respect of the recipient);
 - (i) in relation to England, for contributions made in respect of an alternative payment to be dealt with, with the consent of the Treasury, otherwise than by payment into the Consolidated Fund;
 - (j) in relation to Wales, for contributions made in respect of an alternative payment to be dealt with otherwise than by payment into the Consolidated Fund.”

(5) In subsection (5)—

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- (a) in the opening words, after “loans” insert “ or from AP recipients in respect of alternative payments ”,
 - (b) in paragraphs (a)(i) and (c), after “borrowers” insert “ or AP recipients ”,
 - (c) in paragraph (d)(ii), at the end insert “ or, in the case of requirements imposed on AP recipients, additional contributions in respect of such periods of the same amounts as the payments which would be required by virtue of this paragraph if the AP recipient were a borrower ”,
 - (d) after paragraph (e) insert—
 - “(ea) requiring the making by AP recipients, in respect of periods when any contributions due in respect of their alternative payments have not been made, of—
 - (i) additional contributions of the same amounts as the payments which would be required by virtue of paragraph (e)(i) if the alternative payments were loans, or
 - (ii) both such additional contributions and one or more surcharges (together with further additional contributions in respect of periods when such surcharges are due but unpaid);”
 - (e) in paragraph (f)—
 - (i) after “borrowers” insert “ or AP recipients ”, and
 - (ii) at the end insert “ or contributions ”, and
 - (f) in paragraph (h), after “borrowers” insert “ or AP recipients ”.
- (6) In subsection (10), after “Interest” insert “ or contributions ”.
- (7) After subsection (10), insert—
“(11) In this section—
 - (a) references to an alternative payment are to a payment which, in the opinion of the person making the regulations concerned, achieves a similar effect to a loan under this section without including provision for the payment of interest, and
 - (b) references to a borrower are to a person to whom a loan is made.”
- (8) In section 46 of the Teaching and Higher Education Act 1998 (extent etc)—
 - (a) in subsection (7), in the entry relating to section 22, after “(3)(e)” insert “ , (4B)(e) ”, and
 - (b) in subsection (8), in the entry relating to section 22, after “or (h)” insert “ , (4B)(e), (f), (g) or (h) ”.
- (9) The functions of making any provision authorised by the new subsection (4B)(e) to (h) of section 22 of the Teaching and Higher Education Act 1998 (as inserted by subsection (4)) are exercisable in relation to Wales by the Secretary of State (rather than by the Welsh Ministers).

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PROSPECTIVE

87 Section 86: consequential amendments

- (1) In section 73E of the Education (Scotland) Act 1980 (supply of information in connection with student loans)—
 - (a) in subsections (2) and (3)(b), after “loans” insert “ and alternative payments ”, and
 - (b) in subsection (6)(c)—
 - (i) in the opening words, after “loans” insert “ and alternative payments ”, and
 - (ii) in sub-paragraph (ii), after “loans” insert “ or alternative payments ”.
- (2) In section 23(7)(a)(i) of the Teaching and Higher Education Act 1998 (functions in respect of which payments are to be made), for “or loans” substitute “ , loans or alternative payments ”.
- (3) In section 24 of that Act (supply of information in connection with student support)—
 - (a) in subsections (2) and (3)(b)(i), after “loans” insert “ and alternative payments ”,
 - (b) in subsection (6)(c)—
 - (i) in the opening words, after “loans” insert “ and alternative payments ”, and
 - (ii) in sub-paragraph (i), after “loans” insert “ or alternative payments ”, and
 - (c) in subsection (10), for “or loans” substitute “ loans, or alternative payments ”.
- (4) In paragraph 15 of Part 2 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (restrictions on functions of Commissioners for Revenue and Customs), for “the student loan scheme” substitute “ student support ”.
- (5) In Article 5 of the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14) (supply of information in connection with student loans))—
 - (a) in paragraphs (2) and (3)(b), after “loans” insert “ and alternative payments ”, and
 - (b) in paragraph (6)(c)—
 - (i) in the opening words, after “loans” insert “ and alternative payments ”, and
 - (ii) in head (ii), after “loans” insert “ or alternative payments ”.

88 Other amendments relating to financial support

- (1) Section 22 of the Teaching and Higher Education Act 1998 (power to give financial support for students) is amended as follows.
- (2) In subsection (2), after paragraph (a) insert—
 - “(aa) for the designation of a higher education course for the purposes of this section to be determined by reference to matters determined or published by the Office for Students or other persons (whether before or after the regulations are made);”.

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(3) In subsection (2), after paragraph (f) insert—

“(fa) in the case of a grant under this section in connection with a higher education course, where a payment has been so suspended, for the cancellation of any entitlement to the payment in such circumstances as may be prescribed by, or determined by the person making the regulations under, the regulations;”.

(4) After subsection (2), insert—

“(2A) The provision which may be made by virtue of subsection (2)(b) in respect of higher education courses includes provision prescribing the maximum amount by reference to matters determined or published by the Secretary of State or other persons (whether before or after the regulations are made).”

(5) In subsection (3), after paragraph (d) insert—

“(da) in the case of a loan under this section in connection with a higher education course, for the cancellation of the entitlement of a borrower to receive a sum under such a loan in such circumstances as may be prescribed by, or determined by the person making the regulations under, the regulations where the payment of the sum has been suspended;”.

Commencement Information

11 S. 88 in force at 1.4.2018 for E. by S.I. 2018/241, reg. 2(1)

12 S. 88 in force at 1.4.2018 for W. by S.I. 2018/415, reg. 2(a)

Student complaints scheme

89 Qualifying institutions for purposes of student complaints scheme

(1) Part 2 of the Higher Education Act 2004 (review of student complaints) is amended in accordance with subsections (2) to (5).

(2) In section 11 (qualifying institutions for purposes of student complaints scheme)—

(a) in the words before paragraph (a), omit “in England or Wales”,

(b) in the opening words of paragraph (a)—

(i) after “university” insert “in England or Wales”, and

(ii) after “the 1992 Act” insert “or section 39 or 93 of the Higher Education and Research Act 2017 (“the 2017 Act”)”,

(c) in paragraph (a)(iii), after “the 1992 Act” insert “or section 42 or 45 of the 2017 Act”,

(d) in paragraph (b), after “institution” insert “in England or Wales”,

(e) in paragraph (c), after “institution” insert “in England or Wales”,

(f) in paragraph (d), at beginning insert “an institution in Wales which is”,

(g) after paragraph (d), insert—

“(da) an institution in England which is a registered higher education provider as defined by section 85 of the 2017 Act (other than one within paragraph (a), (b), (c) or (d) of this section);”.

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- (h) in paragraph (e)—
 - (i) after “institution” insert “ in England or Wales ”, and
 - (ii) for “another paragraph” substitute “ any of the preceding paragraphs ”,
 - (i) after paragraph (e), insert—
 - “(ea) an institution in England (other than one within any of the preceding paragraphs of this section) which provides higher education courses leading to the grant of an award by or on behalf of—
 - (i) another institution in England within another paragraph of this section, or
 - (ii) the Office for Students where the grant is authorised by regulations under section 51(1) of the 2017 Act;”, and
 - (j) in paragraph (f)—
 - (i) after “institution” insert “ in England or Wales ”, and
 - (ii) after “the 1992 Act” insert “ or section 42 or 45 of the 2017 Act ”.
- (3) In section 12(3) (qualifying complaints), for “paragraph (e)” substitute “ paragraph (da), (e), (ea) ”.
- (4) After section 20 insert—

“20A Institutions that cease to be qualifying institutions

- (1) An institution that ceases to be a qualifying institution is a “transitional institution” during the shorter of—
 - (a) the period of 12 months beginning with the day on which it ceases to be a qualifying institution, and
 - (b) the period beginning with that day and ending when it becomes a qualifying institution again,
 (and the shorter period is referred to in this section as “the transitional period”).
 - (2) For the purposes of this Part, a transitional institution is to be treated as continuing to be a qualifying institution during the transitional period, subject to subsection (3).
 - (3) A complaint is not a qualifying complaint to the extent that it is about an act or omission of a transitional institution which occurred on or after the day on which the transitional period began.
 - (4) In section 12(3) (power of designated operator to determine when certain complaints are qualifying complaints), the reference to a qualifying institution within paragraph (da), (e), (ea) or (f) of section 11 includes a transitional institution that was a qualifying institution within the paragraph in question immediately before the beginning of the transitional period.”
- (5) In section 21 (interpretation of Part 2)—
- (a) number the existing text as subsection (1),
 - (b) in that subsection, omit the definition of “governing body”,

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- (c) in that subsection, after the definition of “higher education corporation” insert—
- ““institution” includes a training provider in England who would not otherwise be regarded as an institution;”,
- (d) in that subsection, at the end insert—
- ““training provider” means a person who provides training for members of the school workforce within the meaning of Part 3 of the Education Act 2005 (see section 100 of that Act).”, and
- (e) after that subsection, insert—
- “(2) In this Part “governing body”—
- (a) in relation to a training provider in England who, but for the definition of “institution” in subsection (1), would not be regarded as an institution, means any persons responsible for the provider's management;
- (b) in relation to a provider of higher education designated under section 84 of the Higher Education and Research Act 2017, means any persons responsible for the provider's management;
- (c) in relation to any other 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.”
- (6) In section 118(8) of the Equality Act 2010 (time limits), in the definition of “qualifying institution”, at the end insert “ , and includes an institution which is treated as continuing to be a qualifying institution for the purposes of Part 2 of that Act (see section 20A(2) of that Act) ”.
- (7) In section 32(1) of the Counter-Terrorism and Security Act 2015 (monitoring of performance: further and higher education bodies), in paragraph (a) of the definition of “relevant higher education body”, after “2004” insert “ , disregarding paragraphs (da) and (ea) of that section and the definition of “institution” in section 21(1) of that Act ”.

Commencement Information

- I3** S. 89(1)(2)(a)-(g)(i)(j) in force at 1.4.2018 by [S.I. 2018/241](#), **reg. 2(l)**
- I4** S. 89(2)(h)(i) in force at 1.4.2018 by [S.I. 2018/241](#), **reg. 2(l)**
- I5** S. 89(2)(h)(ii)(4) in force at 1.4.2018 for W. by [S.I. 2018/415](#), **reg. 2(b)**
- I6** S. 89(2)(h)(ii)(4) in force at 1.4.2018 for E. by [S.I. 2018/241](#), **reg. 2(l)**
- I7** S. 89(3)(5)-(7) in force at 1.4.2018 by [S.I. 2018/241](#), **reg. 2(l)**

Deregulation of higher education corporations

90 Higher education corporations in England

Schedule 8 contains provision about higher education corporations in England.

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Commencement Information

18 S. 90 in force at 1.8.2019 by S.I. 2018/1226, reg. 4(k)

Status:

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