



Higher Education Act 2004

2004 CHAPTER 8

PART 3 **E+W**

STUDENT FEES AND FAIR ACCESS

Imposition of conditions as to fees

23 **Duty of Secretary of State to impose condition as to student fees, etc.** **E+W**

(1) The Secretary of State must, when making any grant to a funding body under section 68 of the 1992 Act or [^{F1}section 81 of the 2005 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) [^{F2}section 78 of the 2005 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 [^{F3}Training and Development Agency for Schools];

“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.

Textual Amendments

- F1** Words in s. 23(1) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 25\(2\)\(a\)](#)
- F2** Words in s. 23(1) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 25\(2\)\(b\)](#)
- F3** Words in s. 23(2) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 25\(3\)](#)

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Commencement Information

II S. 23 in force at 14.1.2006 by S.I. 2006/51, art. 2

24 Condition to be imposed by English funding bodies **E+W**

- (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) [F4 section 78 of the 2005 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.

Textual Amendments

- F4** Words in s. 24(4)(c) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 26](#)

Commencement Information

- I2** S. 24 partly in force; s. 24(6) in force for certain purposes at Royal Assent, see s. 52(1)
- I3** S. 24(1)-(5) in force at 14.1.2006 for E. by [S.I. 2006/51](#), [art. 2](#)
- I4** S. 24(6) in force at 14.1.2006 for E. in so far as not already in force by [S.I. 2006/51](#), [art. 2](#)

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25 Transitional cases in which condition must not allow fees to exceed basic amount **E+W**

- (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—
 - (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.

Commencement Information

I5 S. 25 in force at 14.1.2006 by [S.I. 2006/51](#), [art. 2](#)

26 Regulations under section 24(6) relating to basic or higher amount **E+W**

- (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—

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- (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.

[^{F5}27 **Power of National Assembly for Wales to impose conditions as to student fees, etc.** **E+W**]

- (1) The power of the Assembly to impose conditions under section 68(1) of the 1992 Act or section 82(1) or 88(1) of the 2005 Act in relation to grants paid to a funding body includes power to impose a condition requiring the funding body to impose a condition under section 28 in relation to any grants, loans or other payments made by the funding body under section 65 of the 1992 Act, or (as the case may be) section 78 or 86 of the 2005 Act, to the governing body of a relevant institution.
- (2) In this section—

“funding body” means—

 - (a) the Higher Education Funding Council for Wales, or
 - (b) the Training and Development Agency for Schools;

“relevant institution” means an institution specified by the Assembly in a condition under subsection (1), or an institution of a class so specified.]

Textual Amendments

F5 S. 27 substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 27](#)

Commencement Information

I6 S. 27 in force at 31.3.2011 by [S.I. 2011/297](#), [art. 3\(a\)](#)

28 [^{F6}**Condition that may be required to be imposed by Welsh funding bodies**] **E+W**

- (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,

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- (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 [^{F7}the funding body] 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,
 - (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) [^{F8}section 78 or 86 of the 2005 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;
 - [^{F9}“funding body” has the same meaning as in section 27;]
 - “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;

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“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.

Textual Amendments

- F6** S. 28 heading substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 28\(2\)](#)
- F7** Words in s. 28(3) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 28\(3\)](#)
- F8** Words in s. 28(4)(c) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 28\(4\)](#)
- F9** Words in s. 28(6) inserted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 28\(5\)](#)

Commencement Information

- I7** S. 28(1)-(5) in force at 31.3.2011 by [S.I. 2011/297](#), [art. 3\(b\)](#)
- I8** S. 28(6) in force at 11.2.2011 for specified purposes by [S.I. 2011/297](#), [art. 2\(b\)](#)
- I9** S. 28(6) in force at 31.3.2011 in so far as not already in force by [S.I. 2011/297](#), [art. 3\(c\)](#)

29 Sections 23 to 28: supplementary provisions **E+W**

- (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—
- in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given, and
 - 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 [^{F10}the 2005 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 [^{F11}Training and Development Agency for Schools] applies to—
- any condition under section 23 imposed by the Secretary of State,
 - any condition under section 27 imposed by the Assembly, or
 - any condition under section 24 or 28 imposed by either of those Councils or that Agency.

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Textual Amendments

- F10** Words in s. 29(3) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 29\(a\)](#)
- F11** Words in s. 29(3) substituted (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(3)(a), [Sch. 14 para. 29\(b\)](#)
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Commencement Information

- I10** S. 29 partly in force; s. 29 in force for E. at Royal Assent, see s. 52(1)
- I11** S. 29 in force at 31.3.2011 for W. by [S.I. 2011/297](#), [art. 4\(a\)](#)

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