



# Higher Education Act 2004

## 2004 CHAPTER 8

### PART 2 **E+W**

#### REVIEW OF STUDENT COMPLAINTS

#### 11 **Qualifying institutions** **E+W**

In this Part “qualifying institution” means any of the following institutions <sup>F1</sup>...—

- (a) a university [<sup>F2</sup>in England or Wales] (whether or not receiving financial support under section 65 of the 1992 Act [<sup>F3</sup>or section 39 or 93 of the Higher Education and Research Act 2017 (“the 2017 Act”)]) whose entitlement to grant awards is conferred or confirmed by—
  - (i) an Act of Parliament,
  - (ii) a Royal Charter, or
  - (iii) an order under section 76 of the 1992 Act [<sup>F4</sup>or section 42 or 45 of the 2017 Act];
- (b) a constituent college, school or hall or other institution [<sup>F5</sup>in England or Wales] of a university falling within paragraph (a);
- (c) an institution [<sup>F6</sup>in England or Wales] conducted by a higher education corporation;
- (d) [<sup>F7</sup>an institution in Wales which is] a designated institution, as defined by section 72(3) of the 1992 Act.
- [<sup>F8</sup>(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);]
- [<sup>F9</sup>(e) an institution [<sup>F10</sup>in England or Wales] (other than one within [<sup>F11</sup>any of the preceding paragraphs] of this section) which provides higher education courses which are designated for the purposes of section 22 of the 1998 Act by or under regulations under that section;
- [<sup>F12</sup>(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—

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- (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;]
- (f) an institution [<sup>F13</sup>in England or Wales] (other than one within another paragraph of this section) whose entitlement to grant awards is conferred by an order under section 76(1) of the 1992 Act [<sup>F14</sup>or section 42 or 45 of the 2017 Act].]

#### Textual Amendments

- F1** Words in s. 11 omitted (1.4.2018) by virtue of Higher Education and Research Act 2017 (c. 29), ss. **89(2)(a)**, 124(5); S.I. 2018/241, reg. 2(l)
- F2** Words in s. 11(a) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(b)(i)**, 124(5); S.I. 2018/241, reg. 2(l)
- F3** Words in s. 11(a) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(b)(ii)**, 124(5); S.I. 2018/241, reg. 2(l)
- F4** Words in s. 11(a)(iii) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(c)**, 124(5); S.I. 2018/241, reg. 2(l)
- F5** Words in s. 11(b) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(d)**, 124(5); S.I. 2018/241, reg. 2(l)
- F6** Words in s. 11(c) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(e)**, 124(5); S.I. 2018/241, reg. 2(l)
- F7** Words in s. 11(d) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(f)**, 124(5); S.I. 2018/241, reg. 2(l)
- F8** S. 11(da) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(g)**, 124(5); S.I. 2018/241, reg. 2(l)
- F9** S. 11(e)(f) inserted (1.9.2015) by Consumer Rights Act 2015 (c. 15), ss. **89(2)**, 100(5); S.I. 2015/1575, art. 2 (with art. 3); S.I. 2015/1605, art. 2 (with art. 3); S.I. 2015/1575, art. 2 (with art. 3); S.I. 2015/1605, art. 2 (with art. 3)
- F10** Words in s. 11(e) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(h)(i)**, 124(5); S.I. 2018/241, reg. 2(l)
- F11** Words in s. 11(e) substituted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(h)(ii)**, 124(3); S.I. 2018/241, reg. 2(l); S.I. 2018/415, reg. 2(b)
- F12** S. 11(ea) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(i)**, 124(5); S.I. 2018/241, reg. 2(l)
- F13** Words in s. 11(f) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(j)(i)**, 124(5); S.I. 2018/241, reg. 2(l)
- F14** Words in s. 11(f) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. **89(2)(j)(ii)**, 124(5); S.I. 2018/241, reg. 2(l)

#### Commencement Information

- I1** S. 11 in force for E. at 1.11.2004 by S.I. 2004/2781, **art. 2**
- I2** S. 11 in force for W. at 1.12.2004 by S.I. 2004/3144, **Sch. Pt. 1**

## 12 Qualifying complaints **E+W**

- (1) In this Part “qualifying complaint” means, subject to [<sup>F15</sup>subsections (2) and (3)], a complaint about an act or omission of a qualifying institution which is made by a person—
  - (a) as a student or former student at that institution, or

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- (b) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution's awards.
- (2) A complaint which falls within subsection (1) is not a qualifying complaint to the extent that it relates to matters of academic judgment.
- [<sup>F16</sup>(3) The designated operator may determine that a complaint within subsection (1) about an act or omission of a qualifying institution within [<sup>F17</sup>paragraph (da), (e), (ea)] or (f) of section 11 is a qualifying complaint only if it is made by a person who is undertaking or has undertaken a particular course or a course of a particular description.]

#### Textual Amendments

- F15** Words in s. 12(1) substituted (1.9.2015) by [Consumer Rights Act 2015 \(c. 15\), ss. 89\(3\)\(a\), 100\(5\); S.I. 2015/1575, art. 2 \(with art. 3\); S.I. 2015/1605, art. 2 \(with art. 3\); S.I. 2015/1575, art. 2 \(with art. 3\); S.I. 2015/1605, art. 2 \(with art. 3\)](#)
- F16** S. 12(3) inserted (1.9.2015) by [Consumer Rights Act 2015 \(c. 15\), ss. 89\(3\)\(b\), 100\(5\); S.I. 2015/1575, art. 2 \(with art. 3\); S.I. 2015/1605, art. 2 \(with art. 3\); S.I. 2015/1575, art. 2 \(with art. 3\); S.I. 2015/1605, art. 2 \(with art. 3\)](#)
- F17** Words in s. 12(3) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\), ss. 89\(3\), 124\(5\); S.I. 2018/241, reg. 2\(l\)](#)

#### Commencement Information

- I3** S. 12 in force for E. at 1.11.2004 by [S.I. 2004/2781, art. 2](#)
- I4** S. 12 in force for W. at 1.12.2004 by [S.I. 2004/3144, Sch. Pt. 1](#)

### 13 Designation of operator of student complaints scheme **E+W**

- (1) The Secretary of State may, for the purposes of this Part, designate a body corporate as the designated operator for England as from a date specified in the designation.
- (2) The Assembly may, for the purposes of this Part, designate a body corporate as the designated operator for Wales as from a date specified in the designation.
- (3) The Secretary of State or the Assembly may not designate a body under subsection (1) or (2) unless he or the Assembly is satisfied that the body—
- meets all of the conditions set out in Schedule 1,
  - is providing a scheme for the review of qualifying complaints that meets all of the conditions set out in Schedule 2, or is proposing to provide such a scheme from a date not later than the effective date,
  - has consulted interested parties about the provisions of that scheme, and
  - consents to the designation.
- (4) If a body is designated under subsection (1) or (2) the Secretary of State or the Assembly must, before the effective date,—
- give the body notice of the designation, and
  - publish notice of the designation in such manner as he or the Assembly thinks fit.
- (5) In this Part—

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- (a) “the effective date”, in relation to the designation of a body corporate under this section, means the date specified in the designation as the date from which the body is designated as designated operator, and
- (b) any reference to the designated operator is—
  - (i) in relation to an institution in England, a reference to the body designated under subsection (1), and
  - (ii) in relation to an institution in Wales, a reference to the body designated under subsection (2).

#### Commencement Information

- I5** S. 13 in force for E. at 1.11.2004 by [S.I. 2004/2781](#), [art. 2](#)
- I6** S. 13 in force for W. at 1.12.2004 by [S.I. 2004/3144](#), [Sch. Pt. 1](#)

### 14 Duties of designated operator **E+W**

The designated operator must comply with the duties set out in Schedule 3 during the period specified in that Schedule.

#### Commencement Information

- I7** S. 14 in force for E. at 1.11.2004 by [S.I. 2004/2781](#), [art. 2](#)
- I8** S. 14 in force for W. at 1.12.2004 by [S.I. 2004/3144](#), [Sch. Pt. 1](#)

### 15 Duties of qualifying institutions **E+W**

- (1) The governing body of every qualifying institution in England and Wales must comply with any obligation imposed upon it by a scheme for the review of qualifying complaints that is provided by the designated operator.
- (2) The duty imposed by subsection (1) applies from the effective date of the designation and ceases to apply only if the designation is terminated.
- (3) The obligations referred to in subsection (1) include any obligation to pay fees to the designated operator.

#### Commencement Information

- I9** S. 15 in force for E. at 1.11.2004 by [S.I. 2004/2781](#), [art. 2](#)
- I10** S. 15 in force for W. at 1.12.2004 by [S.I. 2004/3144](#), [Sch. Pt. 1](#)

### 16 Termination of designation **E+W**

- (1) The designation of a body under section 13 continues until it is terminated in accordance with Schedule 4.
- (2) If the designation of a body is terminated, the Secretary of State or the Assembly must publish notice of the termination in such manner as he or it thinks fit.

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#### Commencement Information

- I11** S. 16 in force for E. at 1.11.2004 by [S.I. 2004/2781](#), [art. 2](#)  
**I12** S. 16 in force for W. at 1.12.2004 by [S.I. 2004/3144](#), [Sch. Pt. 1](#)

### 17 Privilege in relation to law of defamation **E+W**

- (1) For the purposes of the law of defamation, any proceedings relating to the review under the scheme of a qualifying complaint are to be treated as if they were proceedings before a court.
- (2) For those purposes, absolute privilege attaches to the publication of—
  - (a) any decision or recommendation made under the scheme by a person responsible for reviewing a qualifying complaint, and
  - (b) any report under paragraph 6 or 7 of Schedule 3.
- (3) In this section “the scheme” means the scheme for the review of qualifying complaints provided by the designated operator.

#### Commencement Information

- I13** S. 17 in force for E. at 1.11.2004 by [S.I. 2004/2781](#), [art. 2](#)  
**I14** S. 17 in force for W. at 1.12.2004 by [S.I. 2004/3144](#), [Sch. Pt. 1](#)

### 18 Provision where designation of operator to cease **E+W**

- (1) Where—
  - (a) an agreement to terminate a designation has been made under paragraph 2 of Schedule 4,
  - (b) notice to terminate a designation has been given under paragraph 4 or 6 of Schedule 4, or
  - (c) the designated operator has ceased to exist,the Secretary of State (in relation to England) or, as the case requires, the Assembly (in relation to Wales) may by order make such provision as he or it thinks fit for, or in connection with, the review of qualifying complaints.
- (2) The provision that may be made under this section includes any one or more of the following—
  - (a) provision requiring the designated operator to provide the scheme in accordance with specified requirements;
  - (b) provision modifying, or requiring the designated operator to modify, the provisions of the scheme;
  - (c) provision about the fees payable under the scheme, including provision requiring the repayment of fees already paid;
  - (d) provision for a specified person to take over provision of the scheme;
  - (e) provision for any provision of this Part that applies in relation to a scheme provided by the designated operator to apply (with or without modifications) in relation to a scheme provided by a person specified by virtue of paragraph (d);

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- (f) provision for a specified person to review qualifying complaints, or specified descriptions of qualifying complaints, otherwise than under the scheme;
  - (g) provision requiring the payment of fees by the governing bodies of qualifying institutions to a person specified by virtue of paragraph (f);
  - (h) provision requiring the designated operator to provide such information and assistance as the Secretary of State or the Assembly considers necessary—
    - (i) for the Secretary of State or the Assembly to make provision under this section; or
    - (ii) for any person to comply with, or act under or in accordance with, provision made under this section.
- (3) The Secretary of State or the Assembly may be specified by virtue of subsection (2) (d), but not by virtue of subsection (2)(f).
- (4) In this section—
- “the scheme” means the scheme for the review of qualifying complaints that the designated operator provides or has been providing;
  - “specified” means specified in an order under this section.

#### Commencement Information

**I15** S. 18 in force for E. at 1.11.2004 by [S.I. 2004/2781](#), [art. 2](#)

**I16** S. 18 in force for W. at 1.12.2004 by [S.I. 2004/3144](#), [Sch. Pt. 1](#)

### <sup>F18</sup>19 Extension of time for bringing discrimination proceedings **E+W**

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#### Textual Amendments

**F18** S. 19 repealed (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), [art. 1\(2\)](#), [Sch. 2](#) (see [S.I. 2010/2317](#), [art. 2](#))

#### Commencement Information

**I17** S. 19 in force at 1.11.2004 by [S.I. 2004/2781](#), [art. 3](#)

### 20 Exclusion of visitor’s jurisdiction in relation to student complaints **E+W**

- (1) The visitor of a qualifying institution has no jurisdiction in respect of any complaint which falls within subsection (2) or (3).
- (2) A complaint falls within this subsection if it is made in respect of an application for admission to the qualifying institution as a student.
- (3) A complaint falls within this subsection if it is made by a person—
  - (a) as a student or former student at the qualifying institution, or
  - (b) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution’s awards.

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#### Commencement Information

- I18** S. 20 in force for E. at 1.1.2005 by S.I. 2004/2781, art. 4 (with art. 5)  
**I19** S. 20 in force for W. at 1.1.2005 by S.I. 2004/3144, Sch. Pt. 2 (with art. 6)

### [<sup>F19</sup>20A Institutions that cease to be qualifying institutions **E+W**

- (1) An institution that ceases to be a qualifying institution is a “transitional institution” during the shorter of—
- the period of 12 months beginning with the day on which it ceases to be a qualifying institution, and
  - 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.]

#### Textual Amendments

- F19** S. 20A inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. 89(4), 124(3); S.I. 2018/241, reg. 2(l); S.I. 2018/415, reg. 2(b)

## 21 Interpretation of Part 2 **E+W**

[<sup>F20</sup>(1)] In this Part—

“award” means any degree, diploma, certificate or other academic award or distinction;

“designated operator” has the meaning given by section 13(5)(b);

“the effective date” has the meaning given by section 13(5)(a);

<sup>F21</sup> ...

“higher education corporation” has the meaning given by section 90(1) of the 1992 Act;

[<sup>F22</sup>“institution” includes a training provider in England who would not otherwise be regarded as an institution;]

“interested parties”, in relation to a scheme for the review of qualifying complaints provided or to be provided by a body corporate, means—

- qualifying institutions in England or Wales (as the case may be), and

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(b) persons selected by the body corporate from amongst those it considers to represent the interests of students at qualifying institutions in England or Wales (as the case may be);

“qualifying complaint” has the meaning given by section 12;

“qualifying institution” has the meaning given by section 11.

[<sup>F23</sup>“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).]

[<sup>F24</sup>(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.]

#### Textual Amendments

**F20** S. 21(1): s. 21 renumbered as s. 21(1) (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. 89(5)(a), 124(5); S.I. 2018/241, reg. 2(l)

**F21** Words in s. 21(1) omitted (1.4.2018) by virtue of Higher Education and Research Act 2017 (c. 29), ss. 89(5)(b), 124(5); S.I. 2018/241, reg. 2(l)

**F22** Words in s. 21(1) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. 89(5)(c), 124(5); S.I. 2018/241, reg. 2(l)

**F23** Words in s. 21(1) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. 89(5)(d), 124(5); S.I. 2018/241, reg. 2(l)

**F24** S. 21(2) inserted (1.4.2018) by Higher Education and Research Act 2017 (c. 29), ss. 89(5)(e), 124(5); S.I. 2018/241, reg. 2(l)

#### Commencement Information

**I20** S. 21 in force for E. at 1.11.2004 by S.I. 2004/2781, art. 2

**I21** S. 21 in force for W. at 1.12.2004 by S.I. 2004/3144, Sch. Pt. 1



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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](#)